

STATE OF ILLINOIS

)

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SS.

COUNTY OF COOK

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<input type="checkbox"/> Affirm and adopt (no changes)	<input checked="" type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)(18))
<input checked="" type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Konrad Zochowski,
Petitioner,

vs.

NO: 08 WC 010483

14IWCC0171

Christopher Solarczyk individually and d/b/a Active Contract Carriers,
Artur Robak, Piotr Musialik, and Illinois State Treasurer as
ex-officio custodian of IWBF,
Respondents.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of jurisdiction, employment, accident, notice, benefit rate, medical expenses, occupational disease, temporary disability, penalties and fees and statute of limitations, and being advised of the facts and law, modifies the Decision of the Arbitrator, which is attached hereto and made a part hereof.

Petitioner appeals the February 20, 2013 Decision of Arbitrator Williams finding that no named Respondent was operating under and subject to the automatic coverage provision of Section 3 of the Act or any other provision of the Act in regard to Petitioner's employment on December 5, 2007. The Arbitrator further found that there was an employee-employer relationship that existed between Petitioner and the Respondent Arthur Robak on December 5, 2007, but no such relationship existed with any other named Respondent and Petitioner. The Arbitrator denied Petitioner's request for compensation under the Act and dismissed the claim.

After considering the entire record, the Commission affirms and adopts the Decision of the Arbitrator with regard to jurisdiction and modifies the remainder of the Decision of the Arbit

Petitioner, a truck driver, claims an injury to his low back after a motor vehicle accident on December 5, 2007. Respondent Robak leased a truck from Respondent Musialik. Respondent Robak contracted with Respondent Active Contract Carriers, owned by Respondent Solarczyk, to transport goods in the leased truck. Robak and Petitioner drove the leased truck to deliver the contracted goods. Petitioner was paid by Respondent Robak and controlled by Robak alone.

The Workers' Compensation Act applies automatically to any undertakings, enterprises, or businesses that are deemed "extra hazardous" under Section 3 of the Act. Further, any enterprise or business in Illinois may elect to come under the provisions of the Workers' Compensation Act. 820 ILCS 305/2. The Act applies to all workers in the state who are covered either by the Act's automatic application or by election. Section 3 of the Act sets forth the businesses that are considered to be extra hazardous and subsection 3 establishes as extra hazardous "an employer engaged in carriage by land, water or aerial service and loading or unloading in connection therewith, including the distribution of any commodity by horse drawn or motor vehicle where the employer employs more than 2 employees in the enterprise or business."

There is no evidence that any named Respondent elected coverage under the Act. Petitioner stated in his brief before the Commission that he did not allege Respondent Musialik to be an employer operating under and subject to the Act. The Arbitrator found the same and the Commission affirms. Respondent Active Contract Carriers is a State of Illinois corporation in good standing owned and operated solely by Respondent Solarczyk. The business does not have any employees and uses contracted independent truck drivers to move freight for third parties. The Arbitrator found and the Commission affirms that Respondent Solarczyk, individually and d/b/a Active Contract Carriers, is not an employer operating under and subject to the Illinois Workers' Compensation Act.

The Arbitrator found that Respondent Robak was not operating under and subject to any automatic coverage provision of Section 3 of the Act. The Arbitrator found that while Respondent Robak was a carriage operator under Section 3(3), the evidence does not establish that he had more than two employees. The Arbitrator found and the Commission affirms that Robak was not operating under and subject to the Act. Without any remaining Respondents to the claim, the Commission affirms the Arbitrator's dismissal of Respondent Illinois Injured Workers' Benefit Fund.

As no Respondent was operating under and subject to the Illinois Workers' Compensation Act, the Commission lacks jurisdiction under the Act to make any further findings. The Commission strikes the Arbitrator's findings regarding whether there was an employer/employee relationship between the Petitioner and Respondents, whether the Petitioner's accident arose out of and in the course of his employment with Respondents, whether timely notice was given to the Respondents, the amount of wages and whether concurrent wages were proven, whether the medical services provided to Petitioner were reasonable and necessary, whether the Petitioner's present condition of ill-being is causally related to the injury and the amount of compensation due for temporary total disability.

All else is otherwise affirmed and adopted.

14IWCC0171

IT IS THEREFORE ORDERED BY THE COMMISSION that the February 20, 2013 Decision of the Arbitrator is hereby modified. The Commission lacks jurisdiction under the Act and the claim is dismissed.

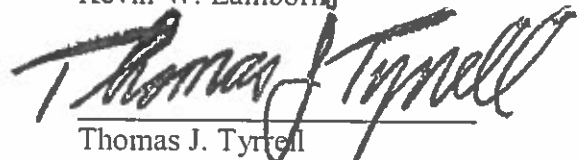
Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: **MAR 07 2014**

drd/adc
o-1/14/14
68


Daniel R. Donohoo


Kevin W. Lamborn


Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

ZOCHOWSKI, KONRAD

Employee/Petitioner

Case# 08WC010483

14IWCC0171

ACTIVE CONTRACT CARRIERS INC
CHRISTOPHER SOLARCZYK INDV & D/B/A
ACTIVE CONTRACT CARRIERS INC ARTUR
ROBAK, PIOTR MUSILAK & IL STATE
TREASURER AS EX-OFFICIO CUSTODIAN OF
THE INJURED WORKERS' BENEFIT FUND

Employer/Respondent

On 2/20/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.13% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0293 KATZ FRIEDMAN EAGLE ET AL
DAVID M BARISH
77 W WASHINGTON ST 20TH FL
CHICAGO, IL 60602

5048 ASSISTANT ATTORNEY GENERAL
MEGAN JANICKI
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601

CHRISTOPHER SOLARCZYK D/B/A
ACTIVE CONTRACT CARRIER INC
714 N POINT DR
SCHAUMBURG, IL 60193

1739 STONE & JOHNSON CHARTERED
200 E RANDOLPH ST
24TH FLOOR
CHICAGO, IL 60601

PIOTR MUSIALIK
#2
960 BRANDY CT
DES PLAINES, IL 60016

STATE OF ILLINOIS)

COUNTY OF COOK)

☒ Injured Workers' Benefit Fund (§4(d))

☐ Rate Adjustment Fund (§8(g))

☐ Second Injury Fund (§8(e)18)

☐ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION

ARBITRATION DECISION

KONRAD ZOCHOWSKI
Employee/Petitioner

Case #08 WC 10483

14IWCC0171

v.

ACTIVE CONTRACT CARRIERS, INC..
CHRISTOPHER SOLARCZYK INDIVIDUALLY
& D/B/A ACTIVE CONTRACT CARRIERS, INC..
ARTUR ROBAK, PIOTR MUSILAK AND
ILLINOIS STATE TREASURER AS EX-OFFICIO
CUSTODIAN OF THE INJURED WORKERS' BENEFIT FUND
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Gerald Jutila, arbitrator of the Workers' Compensation Commission, in the city of Chicago, on September 16, 2009, December 7, 2009, and January 11, 2010, and by the Honorable Robert Williams, arbitrator of the Workers' Compensation Commission, in the city of Chicago, on February 1, 2013. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues, and attaches those findings to this document.

ISSUES:

- A. ☒ Was the respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☒ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of the petitioner's employment by the respondent?
- D. ☒ What was the date of the accident?
- E. ☒ Was timely notice of the accident given to the respondent?

- F. ☒ Is the petitioner's present condition of ill-being causally related to the injury?
- G. ☒ What were the petitioner's earnings?
- H. ☒ What was the petitioner's age at the time of the accident?
- I. ☐ What was the petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to petitioner reasonable and necessary?
- K. ☒ What temporary benefits are due: ☐ TPD ☐ Maintenance ☒ TTD?
- L. ☒ What is the nature and extent of injury?
- M. ☐ Should penalties or fees be imposed upon the respondent?
- N. ☐ Is the respondent due any credit?
- O. ☐ Prospective medical care?

FINDINGS

- This claim was filed on March 7, 2008, against respondents Active Contact Carrier, Inc., and Kintetsu World Express. The claim was amended March 21, 2008, to include respondents Piotr Musialik and Artur Robak, amended a second time May 15, 2008, to include respondent Christopher Solarczyk, individually and d/b/a as Active Contract Carriers, Inc., and a third time March 19, 2009, to include the State Treasurer, Ex-Officio Custodian for the Injured Workers' Benefit Fund.
- At the initial hearing on September 16, 2009, respondents Piotr Musialik and Artur Robak failed to appear by its officers or a representative and the matter proceeded *ex parte* against them.
- There was no evidence in the Commission's case file, its data base or the transcript of proceedings of a motion requesting a trial date for Arbitrator Jutila's September 2009 status call in compliance with §7030.20 of the Rules Governing Practices before the Illinois Workers' Compensation Commission. Nor was there evidence that timely notice was sent to respondents Piotr Musialik and Artur Robak to their last known address via regular U.S. mail or delivered to them or that they received actual notice of the petitioner's motion in accordance with §7030.20.
- There is no evidence that the hearing date, time and location was sent to respondents Piotr Musialik and Artur Robak to their last known address via regular U.S. mail or delivered to them or that respondents Piotr Musialik and Artur Robak received actual notice of the hearing date, time and location or that it has otherwise complied with §7030.20 of the Rules Governing Practices before the Illinois Workers' Compensation Commission.
- The petitioner did not present evidence that respondents Piotr Musialik and Artur Robak agreed to a hearing on September 16, 2009, or waived the requirements of

§7030.20 of the Rules Governing Practices before the Illinois Workers' Compensation Commission.

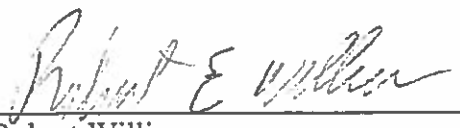
- The respondent Injured Workers' Benefit Fund Illinois through the State Treasurer, the *ex-officio* custodian of the Injured Workers' Benefit Fund, was represented by the Illinois Attorney General's office.
- After the start of the hearing on September 16, 2009, pursuant to the motion of the petitioner, respondent Kintetsu World Express was dismissed.
- On September 16, 2009, the matter was continued to December 7, 2009, at which time respondent Autur Robak appeared and testified without any objections regarding the proceedings or regarding the earlier *ex parte* hearing thereby implicitly waiving as to him any errors regarding the *ex parte* hearing.
- At the time of injury, the petitioner was 28 years of age, single with no children under 18.

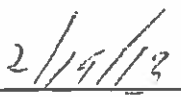
ORDER:

- The petitioner's request for compensation under the Act is denied and the claim is dismissed.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.


Robert Williams


Date

FEB 20 2013

14IWCC0171

FINDINGS OF FACTS:

On December 5, 2007, the petitioner, a truck driver, received emergency medical care for lower back pain at Jasper County Hospital after sliding off a road and turning his vehicle over. CT scans of his lumbar spine revealed a 75% compression fracture with retropulsion of the fracture fragments at T12. After a transfer to ST. James Hospital the same day, a T12 corpectomy and anterior fusion of T11 through L1 was performed on December 12th. The petitioner was discharged on the 15th and followed up with Dr. Gregory McComis on the 19th. The doctor started the petitioner on a TLSO brace, which was discontinued for a lumbar corset on February 1, 2008. At his last follow-up with Dr. McComis on April 9, 2008, the petitioner reported no pain and normal activities. The doctor noted 5/5 strength in his upper and lower extremities, full flexion and extension and normal toe and heel walking. He was released without any work restrictions.

FINDING REGARDING WHETHER RESPONDENTS WERE OPERATING UNDER AND SUBJECT TO THE WORKERS' COMPENSATION ACT:

Based upon the evidence presented, the respondents Active Contact Carrier, Inc., Piotr Musialik, Artur Robak and Christopher Solarczyk, individually and d/b/a Active Contract Carriers, Inc., were not operating under and subject to the automatic coverage provision of §3 of the Workers' Compensation Act or any other provisions of the Act in regards to the petitioner's employment on December 5, 2007.

Although the respondent Artur Robak was a carriage operation involved in the loading, unloading and distribution of commodities, the evidence does not establish that he had more than two employees on December 5, 2007. Respondent Piotr Musialik was not subject to the Act by the lease of his truck to respondent Artur Robak. The evidence is that respondent Christopher Solarczyk was a State of Illinois corporation in good

standing on December 5, 2007, and not a sole proprietorship d/b/a Active Contract Carriers, Inc. The respondent Active Contract Carrier, Inc., was not a trucking business but a freight moving operation using independent truck drivers for moving the freight. The corporation was a one-man business and did not own any trucks or make deliveries.

FINDING REGARDING WHETHER THERE WAS AN EMPLOYER/EMPLOYEE RELATIONSHIP BETWEEN THE PETITIONER AND RESPONDENTS:

An employer/employee relationship existed between the petitioner and the respondent Artur Robak on December 5, 2007. Respondent Artur Robak control the petitioner's work, paid his salary and leased the vehicle driven by the petitioner.

The petitioner failed to prove that an employer/employee relationship existed between him and respondents Active Contract Carrier, Inc., Piotr Musialik and Christopher Solarczyk, individually and d/b/a as Active Contract Carriers, Inc., on December 5, 2007. The petitioner failed to prove that an employer/employee relationship existed between him and respondent Christopher Solarczyk. He did not operate his business as a sole proprietorship d/b/a Active Contract Carriers, Inc., but as a State of Illinois corporation. Respondent Active Contract Carrier, Inc., was not a carriage enterprise or a business of loading and unloading of commodities. Their business was a freight transportation supplier that utilized the services of owners of small and medium trucks. Respondent Active Contract Carrier, Inc., did not hire the petitioner or supply the truck driven by the petitioner and did not pay the petitioner for his work. The petitioner was not subject to any control, scheduling or termination by respondent Active Contract Carrier, Inc., and did not move freight exclusively for them.

The petitioner failed to prove that a joint employment or a loaning and borrowing relationship existed between him and respondents Active Contract Carrier, Inc., Piotr

14IWCC0171

Musialik and Christopher Solarczyk, individually and d/b/a as Active Contract Carriers, Inc., on December 5, 2007. The petitioner's request for compensation under the Act is denied and the claim is dismissed.

FINDING REGARDING WHETHER THE PETITIONER'S ACCIDENT AROSE OUT OF AND IN THE COURSE OF HIS EMPLOYMENT WITH THE RESPONDENTS:

Based upon the testimony and the evidence submitted, the petitioner proved that he sustained an accident on December 5, 2007, arising out of and in the course of his employment with the respondent Artur Robak.

FINDINGS REGARDING WHETHER TIMELY NOTICE WAS GIVEN TO THE RESPONDENTS:

Based upon the testimony and the evidence submitted, the respondent Artur Robak received timely notice of the petitioner's injury.

FINDING REGARDING THE AMOUNT OF WAGES AND WHETHER CONCURRENT WAGES WERE PROVEN:

Based upon the petitioner's testimony, in the year preceding the injury, his average weekly wage from respondent Artur Robak was \$400.00.

FINDING REGARDING WHETHER THE MEDICAL SERVICES PROVIDED TO PETITIONER ARE REASONABLE AND NECESSARY:

The medical care rendered the petitioner was reasonable and necessary.

FINDING REGARDING WHETHER THE PETITIONER'S PRESENT CONDITION OF ILL-BEING IS CAUSALLY RELATED TO THE INJURY:

Based upon the testimony and the evidence submitted, the petitioner proved that his current condition of ill-being with his lumbar and thoracic spine is causally related to the work injury on December 5, 2007.

14IWCC0171

FINDING REGARDING THE AMOUNT OF COMPENSATION DUE FOR TEMPORARY TOTAL DISABILITY:

The petitioner was temporarily totally disabled from December 5, 2007, through April 9, 2008.

FINDING REGARDING THE ILLINOIS WORKERS' BENEFIT FUND:

An award against the Fund under §4(d) of the Act is only permitted to pay workers' compensation benefits when an employer has failed to provide coverage as determined under §4(d) and has failed to pay the benefits due. The respondent Artur Robak was not subject to the Act or required to provide coverage under §4(d) of the Act on December 5, 2007. The respondent Injured Workers' Benefit Fund Illinois is dismissed.

STATE OF ILLINOIS)
) SS.
 COUNTY OF MADISON)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify <input type="checkbox"/> up	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JANET BLANEY-PEELER,

Petitioner,

14IWCC0172

vs.

NO: 10 WC 15902

HARRAH'S METROPOLIS CASINO,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of medical, and nature and extent and being advised of the facts and applicable law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission modifies the Decision of the Arbitrator with respect to permanent partial disability only. The Commission finds that the Petitioner is entitled to twenty-five percent loss of use of the person-as-a-whole as the result of her January 26, 2009 work-related injury.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on December 11, 2012, is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$348.35 per week for a period of 125 weeks, as provided in §8(d)(2) of the Act, for the reason that the injuries sustained caused the loss of use of twenty-five percent of the person-as-a-whole.

14IWCC0172

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$759.78 for medical expenses under §8(a) of the Act and pursuant to the fee schedule.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

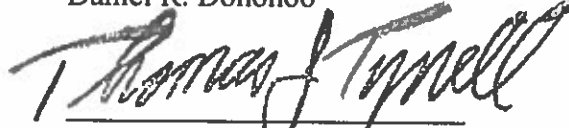
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$43,600.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAR 10 2014

DRD/tdm
O: 2-25-14
068


Daniel R. Donohoo


Thomas J. Tyrrell


Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0172

BLANEY-PEELER, JANET

Case# 10WC015902

Employee/Petitioner

HARRAH'S METROPOLIS CASINO

Employer/Respondent

On 12/11/2012, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.13% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0355 WINTERS BREWSTER CROSBY ET AL
LINDA J BRAME
111 W MAIN ST
MARION, IL 62959

1892 ROBERTS PERRYMAN PC
J BRADLEY YOUNG
1034 S BRENTWOOD SUITE 2100
ST LOUIS, MO 63117

STATE OF ILLINOIS)
)SS.
 COUNTY OF Madison)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION

Janet Blaney-Peeler

Employee/Petitioner

v.

Harrah's Metropolis Casino

Employer/Respondent

Case # 10 WC 15902

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **William R. Gallagher**, Arbitrator of the Commission, in the city of **Collinsville**, on **October 22, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other _____

FINDINGS

On January 26, 2009, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident in respect to the right shoulder.

In the year preceding the injury, Petitioner earned \$30,190.42; the average weekly wage was \$580.59.

On the date of accident, Petitioner was 47 years of age, *married* with 0 dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has not* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$0.00 for TTD, \$0.00 for TPD, \$0.00 for maintenance, and \$709.00 for other benefits, for a total credit of \$709.00. The parties stipulated all TTD benefits have been paid in full.

Respondent is entitled to a credit of amounts paid under Section 8(j) of the Act.

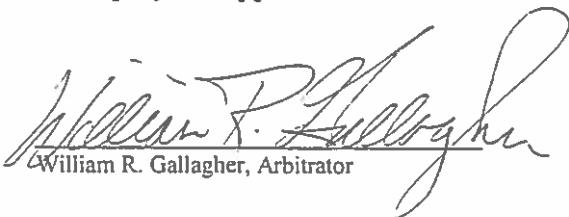
ORDER

Respondent shall pay reasonable and necessary medical bills as identified in Petitioner's Exhibit 1 as provided in Sections 8(a) and 8.2 of the Act subject to the fee schedule. Respondent shall receive a credit for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act. Based upon the Arbitrator's Conclusions of Law attached hereto, all other medical and chiropractic bills are denied.

Respondent shall pay Petitioner the sum of \$348.35 per week for 100 weeks as provided in Section 8(d)2 of the Act because injury sustained caused the permanent partial disability of 20% loss of use of the body as a whole.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.


William R. Gallagher, Arbitrator

December 7, 2012
Date

DEC 11 2012

Petitioner filed an Application for Adjustment of Claim which alleged she sustained a repetitive trauma injury arising out of and in the course of her employment for Respondent. The Application alleged a date of accident (manifestation) of January 26, 2009, and that Petitioner sustained repetitive trauma and that the part of the body affected was right shoulder/arm, exhaustion, lumbar spine and cervical spine. Petitioner subsequently filed an Amended Application for Adjustment of Claim which was identical to the initial application filed with the singular exception being that the date of accident (manifestation) was alleged to be November 11, 2009. At trial, the parties stipulated that the appropriate date of accident (manifestation) was January 26, 2009, that all temporary total disability benefits had been paid and that Respondent had paid Petitioner a permanent partial disability advanced of \$709.00 for which it was entitled to a credit. The disputed issues were causal relationship, liability for various medical/chiropractic bills and the nature and extent of disability.

This case was previously tried on October 14, 2010, before Arbitrator John Dibble on a 19(b) Petition. Arbitrator Dibble's decision was entered on November 10, 2010, and he ruled in favor of the Petitioner on virtually all of the disputed issues finding accident, notice, awarding both temporary total disability benefits and medical bills. In respect to causality, Arbitrator Dibble found that there was a causal relationship between the repetitive trauma accident and Petitioner's conditions in both the neck and right shoulder.

Petitioner's counsel filed another 19(b) Petition and the case was set before Arbitrator Deborah Simpson on January 20, 2012. A conference took place before Arbitrator Simpson at that time which resulted in an agreement being reached between Petitioner's counsel and Respondent's counsel. Following this conference, Respondent's counsel sent Petitioner's counsel an e-mail on January 27, 2012, which summarized the agreement that had been reached on January 20, 2012. This agreement stated, in relevant part, the following:

"In exchange for paying the TTD benefits going back to June 8, 2011, and in exchange for the reinstatement of TTD benefits currently (as described in the prior paragraph), Petitioner agrees to the following:

'in light of the medical evidence from Dr. Hoffman, Dr. Davis, Dr. Wood, and Dr. Emanuel, Petitioner's work-related injury is limited to the right shoulder (Right Upper Extremity).'"

In a responsive e-mail from Petitioner's counsel to Respondent's counsel it stated:

"I agree. Please issue the TTD check today. Thanks."

The initial e-mail also contained a statement that it was agreed that if the case proceeded to trial at a later time, that the agreement would be admissible as evidence. These e-mails were so received into evidence at the time of the trial.

Petitioner worked as a blackjack dealer at Respondent's casino in Metropolis, Illinois. Petitioner worked 10 hours a day, four days a week and frequently worked overtime. Petitioner experienced a gradual onset of pain in her right shoulder and cervical area. Subsequent to the 19(b) award of November 10, 2010, Petitioner did not contact Dr. Sonjay Fonn until February 7, 2011, to request an off work slip. There was no examination and Dr. Fonn simply provided the slip without seeing or examining the Petitioner.

Dr. Fonn was deposed on November 10, 2011, and both his deposition testimony and medical records were received into evidence at trial. Dr. Fonn examined Petitioner on March 23 and April 6, 2011, and renewed his recommendation that Petitioner have neck surgery which she again refused. When Dr. Fonn saw Petitioner again on December 21, 2011, she informed him that she had been treated by a chiropractor and Dr. Fonn recommended she continue doing so. He did authorize her to be off work at that time. When Dr. Fonn saw Petitioner on April 25, 2012, he reviewed the physical therapy notes and examined Petitioner and then opined that she had made "excellent progress" and he authorized her to return to work without restrictions.

At Respondent's direction, Petitioner was examined by Dr. James Emanuel on August 30, 2011. Dr. Emanuel was deposed on September 18, 2012, and his deposition was received into evidence at trial. In regard to the cervical spine, Dr. Emanuel diagnosed Petitioner with degenerative disc disease at C4-C5 and C5-C6 which he opined was not related to her work for Respondent. In regard to Petitioner's right shoulder, Dr. Emanuel diagnosed Petitioner with subscapular bursitis of the scapula and subacromial bursitis of the acromioclavicular joint. Dr. Emanuel opined that the shoulder condition was related to Petitioner's work activities for Respondent. He recommended surgery consisting of a decompression and distal clavicle resection. In respect to chiropractic care, Dr. Emanuel opined that it was prolonged and ineffective.

Petitioner was examined by Dr. William Hoffman, a neurosurgeon, on May 18, 2011. Dr. Hoffman was selected by Petitioner. When Petitioner saw Dr. Hoffman she complained of low back, in addition to neck and right shoulder, symptoms. Dr. Hoffman later treated Petitioner for a cyst in the low back on June 24, 2011, and in a report dated July 27, 2011, he noted Petitioner had been treated for a work-related injury involving her neck and right shoulder. In a supplemental report dated June 13, 2011, Dr. Hoffman stated that Petitioner's neck and shoulder problems are "...purely shoulder" and that an orthopedic consultation was indicated.

Petitioner was examined by Dr. J. Michael Davis, an orthopedic surgeon, on October 17, 2011. Dr. Davis was a physician Petitioner selected on her own. At the time of this visit, Petitioner's primary complaints were to the right shoulder and arm. On examination, Petitioner exhibited exquisite tenderness over the levator scapular area of the right shoulder. Dr. Davis opined Petitioner had chronic right upper extremity pain with a history of C6 radiculitis from old medical records, levator scapular syndrome and mild right shoulder bursitis without evidence of a rotator cuff tear. Dr. Davis recommended steroid injections which Petitioner received that same day. Dr. Davis later saw Petitioner at which time she stated her right shoulder complaints were much worse. Dr. Davis then recommended a cortisone injection which Petitioner declined to undergo. Dr. Davis also recommended that an MRI scan be performed so as to further evaluate the shoulder.

Petitioner sought treatment from three chiropractors subsequent to the prior decision, John Dinkelman, Charles Koester and Jason Ozbourn. Petitioner testified Dinkelman did not provide any treatment for her work injuries but that Koester and Ozbourn did treat her for her work injuries. Petitioner sought these chiropractors on her own. Koester saw Petitioner 10 times during 2011 and provided treatment to various areas of the spine. Ozbourn saw Petitioner for numerous treatments during 2011 and 2012. In both instances, Petitioner testified that the chiropractic treatment would give her subjective relief for just a few hours but nothing beyond that.

Dr. Davis provided a light duty release in late October, 2011, and Petitioner attempted to return to work on December 2, 2011, in the parking lot of Respondent's place of business. This was a light duty assignment and Petitioner was required to record the license plate numbers of cars entering the premises. Petitioner testified that after two hours of work her complaints increased and she ceased work after just four hours. Petitioner has not worked in any capacity since that time up to and including the date of trial in this case.

Conclusions of Law

In regard to disputed issue (F) the Arbitrator makes the following conclusion of law:

The Arbitrator finds Petitioner's current condition of ill-being in respect to the right shoulder is causally related to the repetitive trauma injury of January 26, 2009.

In support of this conclusion the Arbitrator notes the following:

The Arbitrator takes judicial notice of the decision of Arbitrator Dibble entered on November 10, 2010, which found both the neck and right shoulder conditions to be related to the repetitive trauma accident. While this finding is the law of the case, the subsequent hearing of October 22, 2012, involved different legal and factual issues than those presented at the prior hearing. The Arbitrator finds the holding of the case of Weyer v. Illinois Workers' Compensation Commission, 900 N.E.2d 360, 369 (Ill. App. 1st Dist. 2008) to be dispositive.

The Arbitrator notes the medical opinions of Dr. Emanuel, Dr. Hoffman and Dr. Davis all focused on the right shoulder as being the Petitioner's primary area of complaint.

Finally, the Arbitrator notes the exchange of e-mails between Respondent's and Petitioner's counsel that occurred on January 27, 2012, in which the parties agreed that the injuries were limited to the right shoulder to amount to a pretrial stipulation of the parties.

In regard to disputed issue (J) the Arbitrator makes the following conclusions of law:

The Arbitrator concludes that the chiropractic care sought by Petitioner was not reasonable and necessary and Respondent is thereby not liable for payment of the bills associated therewith.

In support of this conclusion the Arbitrator notes the following:

Dr. Emanuel specifically opined that the chiropractic care was both prolonged and ineffective. Further, the Petitioner testified that she did not have any lasting relief from the chiropractic treatment.

The Arbitrator concludes the care provided by Dr. William Hoffman and Dr. J. Michael Davis to fall outside the two physician rule and Respondent is thereby not liable for the medical bills incurred therewith.


The Arbitrator finds Respondent is liable for the medical bills incurred in connection with the medical treatment provided by Dr. Fonn identified in Petitioner's Exhibit 1. The Respondent shall pay reasonable and necessary medical bills as identified in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

In regard to disputed issue (L) the Arbitrator makes the following conclusion of law:

The Arbitrator finds Petitioner has sustained permanent partial disability to the extent of 20% loss of use of the body as a whole.

In support of this conclusion the Arbitrator notes the following:

Petitioner has had ongoing symptoms in respect to the right shoulder and has declined to undergo the recommended surgery. Petitioner currently alleges that she is unable to return to work.


William R. Gallagher, Arbitrator

STATE OF ILLINOIS)
) SS.
 COUNTY OF WILL)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Rafael Vazquez,

Petitioner,

14IWCC0173

vs.

NO: 11 WC 34703

The Turf Team,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of medical expenses, prospective medical expenses, causal connection, temporary total disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 18, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

14IWCC0173

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

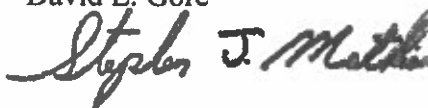
Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAR 10 2014

DLG/gal
O: 3/6/14
45



David L. Gore



Stephen Mathis



Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

VAZQUEZ, RAFAEL

Employee/Petitioner

Case# 11WC034703

14IWCC0173

THE TURF TEAM

Employer/Respondent

On 7/18/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1357 RATHBUN CSEVENYAK & KOZOL
LUIS MAGANA
3260 EXECUTIVE DR
JOLIET, IL 60431

0766 HENNESSY & ROACH PC
MICHAEL GEARY
140 S DEARBORN 7TH FL
CHICAGO, IL 60603

STATE OF ILLINOIS)
)SS.
COUNTY OF WILL)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

19(b)

14IWCC0173

Rafael Vazquez

Employee/Petitioner

v.

The Turf Team

Employer/Respondent

Case # 11 WC 34703

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gregory Dollison**, Arbitrator of the Commission, in the city of **New Lenox, Illinois**, on **3-13-13**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ Is Petitioner entitled to any prospective medical care?
- L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
- M. ☒ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other _____

FINDINGS

14IWCC0173

On the date of accident, **8-27-11**, Respondent *was* operating under and subject to the provisions of the Act.
On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.
On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.
Timely notice of this accident *was* given to Respondent.
Petitioner's current condition of ill-being *is* causally related to the accident.
In the year preceding the injury, Petitioner earned **\$22,880.00**; the average weekly wage was **\$440.00**.
On the date of accident, Petitioner was **35** years of age, *married* with **2** dependent children.
Respondent *has not* paid all reasonable and necessary charges for all reasonable and necessary medical services.
Respondent shall be given a credit of **\$2,404.95** for TTD, \$0 for TPD, \$0 for maintenance, and \$ for other benefits, for a total credit of **\$2,404.95**.
Respondent is entitled to a credit of **\$0** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of \$319.00/week for 80-5/7 weeks, commencing August 27, 2011 through March 13, 2013, as provided in Section 8(b) of the Act.

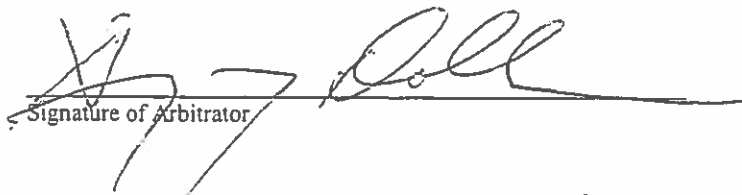
Respondent shall pay reasonable and necessary medical services in the amount of \$175,538.83 as provided in Sections 8(a) and 8.2 of the Act. Said amount may decrease consistent with the medical fee schedule.

Respondent shall authorize prospective medical treatment proposed by Dr. DePhillips, including a second opinion from a spinal surgeon and possible surgical intervention. is liable for Petitioner's prospective medical treatment as recommended by Dr. DePhillips as a result of Petitioner's August 27, 2011 work accident.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.


Signature of Arbitrator


Date

ICArbDec19(b)

JUL 18 2013

FINDINGS OF FACT:

14IWCC0173

Petitioner, Rafael Vazquez, first began working for Respondent, Turf Team, in approximately August, 2010. Petitioner testified that he was hired as a landscaper and worked that position throughout his tenure with Respondent. Petitioner provided that as a landscaper, he was responsible for a number of tasks including installing patios, planting trees, breaking concrete, laying mulch and planting and maintaining gardens. He indicated this was heavy manual labor that including significant lifting and carrying. Prior to working for Respondent, Petitioner indicated, he had never had a back condition of any kind and had always worked full duty without missing work days.

Petitioner testified that on August 27, 2011, he reported for work and was working at full capacity carrying out his usual job duties. While at the work site, he was injured when his boss struck him while operating a Bobcat. Petitioner described the Bobcat as a four wheeled machine with forks used to lift materials that could rotate 360°. Petitioner indicated that he was injured when he and his boss were attempting to unload a trailer. He was on the ground while his boss was operating the Bobcat. As Petitioner reached to grab material out of the trailer, his boss spun the Bobcat and the left fork struck Petitioner in the right thigh. Due to the impact, Petitioner indicated that he fell over the forks before falling to the ground. Petitioner provided that after he was struck, he felt like he was dreaming and remembered being helped up by another worker while his boss was asking if he was okay. Petitioner testified that he noticed immediate pain in his right thigh and left ribs area. Post accident, Petitioner's boss had another employee drove him home. While on the way home, Petitioner noticed right thigh and left sided rib pain. He also noticed lower back pain. Petitioner stated that after arriving home, he felt terrible and called his boss to see what he should do. He was told to go to the hospital.

Petitioner proceeded to the Silver Cross Hospital emergency room. Petitioner gave a history of being struck by a forklift while working and reported pain in his left ribs, right thigh, right foot and lower back. The emergency room physician ordered CT scans for Petitioner's abdomen and pelvis, brain, chest, cervical and lumbar spine. The CT of his brain was normal; the CT of his cervical spine was normal; the CT of his abdomen and pelvis was normal; the CT of his chest was essentially normal; and the CT of his lumbar spine revealed mild degenerative endplate changes. Petitioner was taken off work and diagnosed with a chest contusion, abdominal wall contusion, back contusion and thigh contusion. Upon his discharge, Petitioner was instructed to follow up with a physician. (PX 8)

Petitioner followed up with Alivio Physical Therapy and Chiropractic on August 31, 2011. (PX 3) At that time, he reported being struck by the forklift and that he had ongoing pain in his neck, back, left rib cage, right thigh and right toes. Dr. Barnabas did an examination that revealed several findings including limited range of motion in Petitioner's neck with a positive compression test, swelling in the SI joint, positive sitting straight leg testing with radiculopathy on the left and positive straight leg on the right, tenderness in the right metatarsals and tenderness over the left 4th and 5th ribs. The doctor diagnosed Petitioner with a contusion to his chest, lumbosacral strain/sprain, lumbar spine radiculitis, lumbar disc displacement, lumbago and a cervical strain/sprain with the possibility of a herniated disk. Petitioner then was ordered to undergo physical therapy and additional diagnostic testing for his symptoms. (PX 3)

Petitioner indicated that he began physical therapy, underwent the testing and continued to follow with Dr. Barnabas. At his next appointment, Petitioner's complaints centered on his left rib area and lower back. (P3) The doctor read the lumbar MRI and indicated that it revealed mild generalized disc bulges at L4-5, L5-S1 without associated neuroforaminal stenosis. The cervical spine MRI was normal. The right foot MRI revealed very minimal fluid surrounding the distal aspect of the peroneus brevis tendon near its insertion at the base of

the fifth metatarsal bone, and a mild degree of tenosynovitis was suspected. (PX 3) Petitioner testified that he was taken off work and received workers' compensation benefits. Petitioner continued physical therapy and during his September 16, 2011 appointment was referred for pain management treatment. (PX 3)

Petitioner followed up with Dr. Piska at Advanced Pain Specialists. (PX 2) In addition to continuing therapy at Alivio, Petitioner began receiving epidural lumbar injections. (PX 2) Although Petitioner testified that many of his symptoms improved, he continued to notice significant lower back pain. Because Dr. Piska was changing her office location, Petitioner's pain management was transferred to Dr. Abdellatif at Lakeshore Surgery Center. (PX 5)

Pursuant to Section 12 of the Act, Respondent sent Petitioner for an independent medical examination on October 21, 2011 with Dr. Lawrence Lieber. The history recorded by the doctor is that Petitioner was using a forklift and was then struck by another forklift. Petitioner reported increasing lower back pain that bothers him at night, with ambulation and while sitting or lying down. (RX 1) Following the examination, Dr. Lieber assessed 1.) low back syndrome; 2.) status post cervical sprain; and 3.) pes planovalgus deformity, inflammation, right foot. Dr. Lieber indicated that from a subjective standpoint, Petitioner's complaints were the result of the work injury. He also indicated that objectively there was no evidence of any abnormality within the neck, lower back, or right foot area related to the August 27, 2011 work injury. Dr. Lieber indicated objective findings do not correlate with his subjective complaints and he stated no further diagnostic studies are indicated. The doctor further stated that "MRI scans based upon the records in Petitioner's subjective complaints appear to be indicated." Dr. Lieber also felt no further physical therapy and no further chiropractic care was indicated in association with the August 27, 2011 work injury. According to Dr. Lieber, Petitioner reached maximum medical improvement and could return to full employment with no restrictions in relation to the August 27, 2011 work injury. Lastly, Dr. Lieber felt that Petitioner's medical care appeared to have been reasonable and necessary based upon the subjective complaints associated with the work injury. (RX 1) Petitioner indicated all of his benefits were then terminated.

Records submitted show Petitioner underwent a lumbar epidural steroid injection at L5-S1 on October 1, 2011, at Lakeside Surgery Center and October 17th. On October 26, 2011, Dr. Abdellatif performed trigger point injections and lumbar/sacral facet neurolysis at L3-4 and a radiofrequency. (PX 2, PX 5)

Petitioner continued to complain of significant symptoms. Petitioner indicated that the injections would help on a temporary basis but that his symptoms would return. On November 4, 2011, Dr. Barnabas noted Petitioner was a candidate for a surgical evaluation and recommended a consult with a spinal specialist. (PX 3)

Pursuant to the recommendation of Dr. Abdellatif, Petitioner underwent a lumbar discogram on November 21, 2011. Dr. Abdellatif noted pain was concordant with L4-L5, L5-S1 levels discogenic pain. The doctor recommended a percutaneous disc decompression at the L4-L5, L5-S1 levels. (PX 5) Following the discogram, Petitioner continued with Alivio for physical therapy.

A Utilization Review was performed by Rising Medical Solutions on November 30, 2011. The Utilization Review approved one lumbar epidural steroid injection at L5-S1 and non-certified the remaining injections performed on October 17th and October 26, 2011. Dr. Baljinder Bathia, the physician who conducted the review, provided that he could not certify the remaining injections because "there [was] no documentation provided as to provide a rationale for any of these procedures to be performed." The doctor further added "...given that number of interventional procedures done, it does not appear he would be a candidate for any further procedures. He did have his IME prior to his Radiofrequency ablations and no documentation was provided to whether any relief occurred from the ablations. Given that, I tend to agree with the IME that the patient likely has reached MMI..." (RX 3)

Petitioner's therapeutic exercises/chiropractic therapies were also submitted for Utilization Review. Same was performed by Charles Bodem, D.C., of Rising Medical Solutions on November 30, 2011. The Utilization Review certified six therapeutic exercises/chiropractic therapies rendered and non-certified all physical therapy/chiropractic visits after September 12, 2011. Dr. Bodem indicated ODG guidelines recommend a trial of six visits over two weeks with demonstrated functional improvement. He noted that Petitioner received physical therapy/chiropractic care for a total of eight visits from 8/31/11 – 10/14/11. Dr. Boden stated the records provided did not show that Petitioner's low back functionally improved over this period and as a result all visits (6) after 9/12/12 were not medically necessary. (RX 4)

At the request of Dr. Barnabas, Petitioner was seen by Dr. Giannoulas, G & T Orthopaedics and Sports Medicine, on October 31, 2011. Petitioner's chief complaint was right ankle and leg pain. The doctor recorded a consistent history of accident. After performing an examination and reviewing an MRI scan, Dr. Giannoulas' impression was leg pain and radiculopathy. He indicated that same was referred pain from a dermatome. The doctor felt this was more likely coming from Petitioner's back and his radiculopathy. (PX 12)

Petitioner provided that although his right foot pain decreased somewhat, he continued with complaints. Petitioner testified that, Dr. Barnabas referred him to an orthopedic surgeon. Petitioner saw Dr. Robert Fink on November 27, 2011 with complaints of pain in his right ankle and foot. Dr. Fink reviewed Petitioner's previous MRI and indicated he was suffering from tendonitis along the peroneus brevis tendon. The doctor gave Petitioner an injections and ordered an ankle and foot support. (PX 4)

Petitioner presented to Dr. George DePhillips on December 8, 2011. At that time, Petitioner reported his injury on August 27 when he was struck by the Bobcat. Petitioner indicated that he was injured when the Bobcat turned suddenly and struck him, threw him forward and then he twisted his lower back and landed on his left side. The doctor recorded that Petitioner was suffering from "lower back pain radiating into the buttocks and posterior thighs and calves to the ankles." Dr. DePhillips reviewed Petitioner's lumbar MRI and indicated he was suffering from disk bulging at the L4-L5 and L5-S1 levels. The doctor also read the discogram which he felt was unreliable and referred Petitioner to Pain and Spine Institute for a repeat discogram. Petitioner was held off work until he underwent the discogram and returned to the doctor. (PX 9)

On January 9, 2012, Petitioner presented to Dr. Samir Sharma at Pain & Spine Institute. Upon presenting to Dr. Sharma, Petitioner complained of radicular bilateral leg pain, numbness in the buttock, thigh and lower leg and weakness of the upper leg and lower leg. Dr. Sharma indicated Petitioner was suffering from lumbar radiculopathy and lower back pain. The doctor prescribed oral medication and instructed to return for the prescribed discogram. (PX 17) Petitioner testified that Respondent would not authorize the discogram.

Throughout the spring and summer of 2012, Petitioner continued with Dr. Sharma and received additional conservative treatment including injections. (PX 17) Petitioner testified that, although the injections helped temporarily, his lower back symptoms would return.

Petitioner eventually underwent an additional discogram on August 23, 2012. Dr. Sharma noted on August 29, 2012, the discogram was positive for discogenic pain at the L5-S1 levels. (PX 17)

Petitioner returned to Dr. DePhillips on September 13, 2012 with progressively worsening lower back complaints. Upon reviewing the discogram, the doctor indicated that it confirmed concordant/discogenic pain at L5-S1 based on a concordant pain response during the provocative portion of the discogram. In his deposition testimony, Dr. DePhillips indicated that the discogram confirmed that the L5-S1 disc was contributing to Petitioner's pain and that this was consistent with his pain distribution. Following his examination, Dr. DePhillips indicated that lumbar surgery was reasonable for Petitioner's condition but that prior to recommending the surgery, he wanted Petitioner to get a 2nd opinion. (PX 18, pgs 10-14)

Respondent again sent Petitioner to an IME with Dr. Lieber on December 12, 2012. At that time, Dr. Lieber indicated that Petitioner reported, "consistent low back and right leg pain. He states that his leg discomfort is consistent with his back discomfort..." Dr. Lieber assessed low back syndrome. Dr. Lieber opined that Petitioner's current condition was not related to the August 27, 2011 work accident. Dr. Lieber reasoned that there is no objective evidence of any abnormality within the lumbar spine or right lower extremity that can be related to the August 20 11 work event. Dr. Lieber stated that the treatment Petitioner received since his last evaluation on October 19, 2011 was not related to the August 27, 2011 work accident, nor was it reasonable or necessary. Dr. Lieber indicated Petitioner's subjective complaints are out of proportion to the objective findings, that Petitioner does not require work restrictions in association with the work injury, and that he is able to return to all activities with no restriction based upon objective evaluation. (RX 2)

Petitioner last saw Dr. DePhillips on January 9, 2013. At that time, he had complaints of back pain radiating into the right lower extremity posterior thigh and calf. At that time, the doctor refilled Petitioner's prescriptions and, again, recommended a second opinion. (PX 19, pg. 14) Petitioner testified that in between his appointments with the doctor, his prescriptions would be refilled.

Petitioner testified that he continues to have strong lower back pain going into his right leg. He notices that his condition is worse when it is cold and that he notices cramping due to the pain. When asked if his symptoms interfered with his daily routine, Petitioner indicated that has constant problems sleeping, that he cannot go down stairs, that he cannot bend over and that he tries to not lift anything because of the pain. He further testified that it is his intention to follow up with Dr. DePhillips and to proceed with the 2nd opinion. To date, he indicated that he did not seek the 2nd opinion because he has no money.

With respect to F.) Is Petitioner's condition of ill-being causally related to the injury, the Arbitrator finds as follows:

Petitioner has submitted the evidence deposition testimony of Dr. George DePhillips taken on January 14, 2013. The doctor diagnosed Petitioner's condition as discogenic low back pain and lumbosacral radiculitis secondary to his work injury suffered on August 27, 2011. (PX 18 at 16) Dr. DePhillips testified that his casual connection is based in part on the fact that Petitioner did not have a history of treatment for his lower back pain prior to the work accident and that the description of the injury is consistent with aggravating a dehydrated and bulging disc. (PX 18 at 17) The doctor indicated that the distribution of Petitioner's radiculitis is consistent with the S1 nerve root which correlates with the condordant pain response at the L5-S1 level during the discography. (Id.) Dr. DePhillips also discussed his conclusions in his August 14, 2012 report wherein he indicated that he believes the work accident caused Petitioner's condition noting Petitioner had no clinical symptoms of discogenic low back pain or lumbosacral radiculopathy prior to the work injury. (PX 13)

During his testimony, Dr. DePhillips gave extensive explanation regarding the basis of his diagnosis of discogenic low back pain with radiculitis. He indicated that radicular symptoms are based on two pathological processes; neurologic compression and chemical irritation. (PX 18 at 9) Presently, Dr. DePhillips indicates that Petitioner is suffering from radiculopathy caused by inflammatory cytokines or chemicals which are toxic to nerves. (Id.) He further explained, "So in any patent who has low back pain with bulging who has been symptomatic for six months or longer may be suffering discogenic low back pain from an annular tear resulting in chemical radiculitis in addition to other potential sources of pain, facet injury, myofascial injury." (Id. at 7) When asked if annular tears can be caused by traumatic accidents, Dr. DePhillips testified they could. (Id.)

At hearing, Petitioner testified credibly that he had never had any problems of any kind with his lower back prior to his August 27, 2011 accident. He testified that he had never had treatment of any kind for his

back; he had always carried out his heavy job duties for Respondent without any problems, and that he had never missed work. Respondent provided no evidence to the contrary.

To dispute causation, Respondent offered the opinions of their independent medical examiner, Dr. Lawrence Lieber who initially examined Petitioner on October 21, 2011. Dr. Lieber assessed Petitioner's condition as low back syndrome, status post cervical strain and Pes planovalgus deformity, inflammation of the right foot. He further indicated that Petitioner's subjective complaints were related to the work accident but that there was no objective evidence of any abnormality of the neck, lower back or right foot that can be related to the work accident. The doctor then went on to opine that Petitioner's objective findings do not correlate with his subjective complaints and that CT scans did not appear to have been performed. The doctor further stated that MRI scans based upon the records in the Petitioner's subjective complaints appear to be indicated. According to Dr. Lieber, Petitioner reached maximum medical improvement and may return to full employment with no restrictions in relation to the August 27, 2011 work injury. (RX 1)

Dr. Lieber again examined Petitioner on December 12, 2012. At that time, Petitioner again reported consistent low back and right leg pain. Again, Dr. Lieber indicated that Petitioner's current condition is not related to the August 27, 2011 work accident because there is no objective evidence of abnormality in the lumbar spine. He further indicated that Petitioner's subjective complaints are out of proportion to the objective findings. (RX 2)

The Arbitrator is not persuaded by the opinions of Dr. Lieber. At first blush the history recorded by the doctor is that Petitioner was using a forklift and was then struck by another forklift. In his first report, Dr. Lieber falsely asserts that CT scans have not been done. Upon reporting the emergency room, Petitioner underwent a series of CT scans. Petitioner underwent no less than five CT scans to address his complaints to his abdomen/pelvis, brain, chest, cervical and lumbar spine. Further, Dr. Lieber indicated that Petitioner gave a history of, "while using a forklift stacking some pallets, turned and was struck by the forklift onto his right leg. He subsequently tripped and fell up against another forklift landing on his right side in rib area." This is unlike any history Petitioner gave during hearing or to any other physician noted in the record. Additionally, even though Dr. Lieber indicated an MRI was indicated, he then opined that no further testing was necessary. This is a clear contradiction.

Furthermore, Dr. Lieber indicated that Petitioner's subjective complaints did not correlate with objective testing. However, in his own examination of the back on December 12, 2012, the doctor recorded that Petitioner's range of motion was restricted, that bending and lateral rotation were restricted and that supine straight leg raising was positive on the left at 40 degrees and on the right at 20 degrees. Even if the doctor indicated that the range of motion and lateral bending were self restricting, which he did not, straight leg raising is well known to be an objective test. Additionally, the doctor did not discuss the August 31, 2011 MRI that showed disc bulges at the L4-5 and L5-S1 levels or the fact that the discogram ordered by Dr. DePhillips showed concordant pain response at the L5-S1 level. Dr. Lieber relying on the November 2011 discogram indicated that Petitioner did not suffer from an annular tear. As noted above, he did not discuss the August 2012 discogram showing concordant responses at L5-S1. Dr. DePhillips indicated that he saw an annular in the August 2012 discogram and explained, "I didn't spific (sic) say annular tear, but I did say leakage of contrast into the annulus on September 13, 2012, which would imply an annular tear. (PX 18 pg. 39)

Finally, Dr. DePhillips discussed Dr. Lieber's opinions. Dr. DePhillips candidly indicated that Petitioner did not have any objective neurologic deficits. (PX18 pg. 24) However, the doctor indicated that Dr. Lieber implies that an individual cannot have radiculitis or radiculopathy or herniated disc or nerve root compression who is neurologically intact. (PX18 pg. 24) To this, Dr. DePhillips disagrees and explained that an individual can have radiculopathy due to chemical nerve irritation (Id.) Dr. DePhillips further states that when considering causation with Petitioner, it was important that Petitioner reported his symptoms immediately after

the accident. (Id. at 25) There is no dispute that Petitioner reported his injury immediately, sought medical treatment immediately and had an ongoing and consistent history of complaints.

For the reasons discussed above and based on the greater weight of the evidence, the Arbitrator finds that Petitioner's current condition of ill-being regarding his lumbar spine is causally related to the accident suffered on August 27, 2012. The Arbitrator specifically finds that the testimony of Dr. DePhillips is more persuasive than that of Dr. Lieber.

With respect to issue (J.), Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds as follows:

Given the Arbitrator's finding on causation, Respondent is liable for reasonable and necessary medical charges related to Petitioner's treatment. Petitioner submitted medical bills that remain unpaid by Respondent. (PX 1) During his deposition testimony, Dr. DePhillips was asked if he believed that Petitioner's treatment was reasonable and necessary. (PX 18 at 27) To this, the doctor indicated it was reasonable and necessary and explained that he holds this opinion because, "my treatment and recommendations thus far have complied with the standard of care for spine surgery." (Id.) The doctor was further asked if the other conservative measures offered were reasonable and necessary. (Id.) Again, Dr. DePhillips indicated yes and offered, "Definitely I think that the physical therapy was reasonable and necessary and I agree that spinal injections, both diagnostic and therapeutic are reasonable and necessary." (Id.) He continued, "in general, I think that injections played a role in a condition such as his and that they would be reasonable and necessary and causally related to the work injury." (Id.)

Respondent again relies on Dr. Lieber regarding this dispute. The doctor opines in his first report of October 21, 2011 that Petitioner's subjective complaints were related to the work accident but that there was no objective evidence of any abnormality of the neck, lower back or right foot that could be related to the work accident. The doctor goes on state that the medical care appears to have been reasonable and necessary based upon the subjective complaints associated with the work injury. In his subsequent report, he opines that Petitioner's condition of ill-being was not related to the injury in August 2011. As noted above, the Arbitrator is not persuaded by the opinions of Dr. Lieber.

The Arbitrator notes a Utilization Review was performed by Rising Medical Solutions on November 30, 2011. The Utilization Review approved one lumbar epidural steroid injection at L5-S1 and non-certified the remaining injections performed on October 17th and October 26, 2011. Petitioner's therapeutic exercises/chiropractic therapies were also submitted for Utilization Review. Same certified six therapeutic exercises/chiropractic therapies rendered and non-certified all physical therapy/chiropractic visits after September 12, 2011. As noted above, the Arbitrator relies on the opinions of Dr. DePhillips and is not persuaded by the findings of the Utilization Review. The Arbitrator notes that even Dr. Lieber opined in his October 21, 2011 report that the medical care appears to have been reasonable and necessary based upon the subjective complaints associated with the work injury.

Given the above and based on the greater weight of the evidence, the Arbitrator finds that the treatment received by Petitioner was reasonable and necessary and related to the August 27, 2012 work accident. The Arbitrator awards Petitioner's the unpaid balances related to his treatment pursuant to the medical fee schedule.

With respect to (L) Whether Petitioner is entitled to any temporary total disability benefits, the Arbitrator finds as follows:

Given the Arbitrator's finding regarding causation, Respondent is liable for Petitioner's temporary total disability benefits. Although disputing liability, Respondent agreed that Petitioner's temporary total disability period is from October 27, 2011 through the date of hearing on March 13, 2013, or a period of 80-5/7th weeks.

With respect to (K) Is Petitioner entitled to any prospective medical services, the Arbitrator finds as follows:

Given the Arbitrator's finding regarding causation, Respondent is liable for Petitioner's prospective medical treatment. Petitioner returned to Dr. DePhillips on September 13, 2012 with progressively worsening lower back complaints. Upon reviewing the discogram, the doctor indicated that it confirmed concordant/discogenic pain at L5-S1 based on a concordant pain response during the provocative portion of the discogram. In his deposition testimony, Dr. DePhillips indicated that the discogram confirmed that the L5-S1 disc was contributing to Petitioner's pain and that this was consistent with his pain distribution. Following his examination, Dr. DePhillips indicated that lumbar surgery was reasonable for Petitioner's condition but that prior to recommending the surgery, he wanted Petitioner to get a 2nd opinion. (PX 18, pgs 10-14) The doctor reiterated his recommendation on January 9, 2013.

Considering the above and based on the greater weight of the evidence, the Arbitrator finds Respondent liable for Petitioner's prospective medical treatment including a second opinion from a spinal surgeon and possible surgical intervention.

With respect to (M), Should penalties or fees be imposed on Respondent, the Arbitrator finds as follows:

The Arbitrator finds that legitimate disputes exist in this matter. As such, Petitioner's request for penalties and attorneys' fees is hereby denied.

STATE OF ILLINOIS)

) SS.

COUNTY OF COOK)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Lance Williams,
Petitioner,

vs.

NO. 12 WC 25841

Terminix International
Respondent.

14IWCC0174DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by Petitioner herein and notice given to all parties, the Commission, after considering, the issues of accident, temporary total disability, causal connection, medical expenses, and prospective medical expenses and being advised of the facts and law affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on June 3, 2013 is hereby affirmed and adopted.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: **MAR 11 2014**


Daniel R. Donohoo

o-01/14/14
drd/wj
68



Kevin W. Lamborn

DISSENT

The Arbitrator found that Petitioner failed to prove accident, causal connection, and notice. He denied all benefits. The majority affirmed and adopted the Arbitrator's decision. I view the evidence in a different light, therefore, I respectfully dissent.

Petitioner, a 54 year old pest control technician, had been employed by Respondent in the same capacity for the past nine years. The very nature of the job required Petitioner to work in tight spaces both standing and on his hands and knees. He also climbed a ladder. On the day in question, March 23, 2012, Petitioner was servicing Bloomingdale's in their kitchen area. He had to place a "glue board under a cooler". Spraying was out of the question as this area contained food. Petitioner testified that he was on his hands and knees placing this "glue board" as it could not be slid into place. He stated, "I had to kind of lean forward and shift my weight. I had this sharp pain in my left knee."

Petitioner testified that he finished his job and continued working hoping the knee would feel better. It did not. Petitioner told his supervisor, Andrew Callahan, nine days later that he needed some time off to get his knee checked out. Petitioner had no prior knee problems. On April 2, 2012, Petitioner was discharged from the emergency room and given pain medication. Petitioner was told to give it a couple of weeks and if there was no improvement he would need further treatment. Petitioner continued working after being discharged from the emergency room, all the while taking prescribed medication and following emergency discharge instructions. There was no significant improvement. As such, a follow-up treatment was sought on May 4, 2012 with Dr. Dillella. After the examination, the doctor recommended an MRI. However, it did not occur at that time because it was not approved by the insurance carrier.

On July 10, 2012, Petitioner sought a second opinion from Dr. Michael Foreman who along with prescribing pain medication ordered Petitioner off-work, to begin physical therapy, and have an MRI which was finally approved and performed. The MRI revealed a tear of the posterior horn of the medial meniscus. In August of that year following the review of the findings from the MRI, Dr. Foreman referred Petitioner to Dr. Labanuskas. After examination and review of the medical records, Dr. Labanuskas recommended that Petitioner have surgery immediately to repair the torn meniscus in the left knee.

On November 5, 2012, the Petitioner was sent by the Respondent to see Dr. Bryan Neal for an IME. Dr. Neal noted the date of the accident and the history of injury consistent with all others contained in the Petitioner's medical records. Dr. Neal opined that Petitioner's left knee condition was related to arthritis and not any specific meniscal tear or work injury. However, Dr. Neal further stated that the Petitioner's meniscal tear could possibly occur from someone working on their knees.

The Respondent called Andrew Callahan to testify at trial. Mr. Callahan verified that he was Petitioner's supervisor. He also verified that Petitioner had reported having knee pain to him and requested time off work to consult with a physician.

14IWCC0174

The preponderance of evidence clearly establishes that the Petitioner sustained an accident that arose out of and in the course of his employment. It is un rebutted that this injury occurred while on his knees performing a function of his job. Notice was provided to his supervisor, Mr. Callahan. There was no prior knee injury history. Petitioner's efforts to get proper medical treatment to his injury were reasonable. Petitioner should receive the unquestionably needed arthroscopic surgery along with all needed and necessary post-operative care. The Petitioner is entitled to TTD benefits from July 10, 2012 to April 30, 2013, a period of 41 5/7 weeks and payment of all related unpaid medical bills.

It is for these reasons that I disagree with the Arbitrator and the majority. Respectfully, I Dissent.


Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

WILLIAMS, LANCE

Employee/Petitioner

Case# **12WC025841**

TERMINX

Employer/Respondent

14IWCC0174

On 6/3/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1067 ANKIN LAW OFFICES LLC
JOSHUA RUDOLFI
162 W GRAND AVE SUITE 1810
CHICAGO, IL 60654

2965 KEEFE CAMPBELL BIERY & ASSOC LLC
ELLEN M KEEFE-GARNER
118 N CLINTON ST SUITE 300
CHICAGO, IL 60661

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

STATE OF ILLINOIS)
)
 COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION
19(b) ARBITRATION DECISION

LANCE WILLIAMS
 Employee/Petitioner

Case #12 WC 25841

v.

14IWCC0174

TERMINX
 Employer/Respondent

An Application for Adjustment of Claim was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Robert Williams, arbitrator of the Workers' Compensation Commission, in the city of Chicago, on April 30, 2013. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues, and attaches those findings to this document.

ISSUES:

- A. ☐ Was the respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of the petitioner's employment by the respondent?
- D. ☐ What was the date of the accident?
- E. ☒ Was timely notice of the accident given to the respondent?
- F. ☒ Is the petitioner's present condition of ill-being causally related to the injury?
- G. ☐ What were the petitioner's earnings?
- H. ☐ What was the petitioner's age at the time of the accident?
- I. ☐ What was the petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to petitioner reasonable and necessary?

14IWCC0174

- K. ☒ What temporary benefits are due: ☐ TPD ☐ Maintenance ☒ TTD?
- L. ☐ Should penalties or fees be imposed upon the respondent?
- M. ☐ Is the respondent due any credit?
- N. ☐ Prospective medical care?

FINDINGS

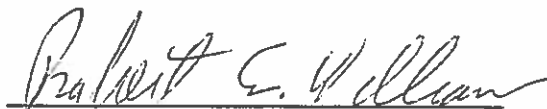
- On March 23, 2012, the respondent was operating under and subject to the provisions of the Act.
- On this date, an employee-employer relationship existed between the petitioner and respondent.
- In the year preceding the injury, the petitioner earned \$57,200.00; the average weekly wage was \$1,100.00.
- At the time of injury, the petitioner was 54 years of age, *married* with two children under 18.
- The parties agreed that the respondent paid \$2,000.00 in benefits to the petitioner.

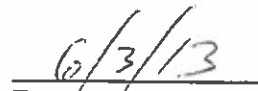
ORDER:

- The petitioner's request for benefits is denied and the claim is dismissed.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.


Robert Williams


Date

JUN -3 2013

FINDINGS OF FACTS:

On April 2, 2012, the petitioner, a pest control technician, sought urgent care for his left knee at Ingalls Calumet City and reported a gradual onset of left knee pain for a week. He did not know the cause of his knee pain or the mechanism of injury and denied that it was related to his job. The doctor noted a positive McMurray's test for a medial meniscus injury and tenderness on palpation of the medial aspect of the anterior knee. X-rays were negative except for mild degenerative changes. On May 4th, the petitioner saw Dr. Carl DiLella at Ridge Orthopedics and reported feeling a significant twinge of left knee pain on April 2, 2012, that occurred after standing from a kneeling position during an inspection at a work site. The petitioner also reported that he initially placed ice on his knee and used oral anti-inflammatories after work and then sought care at Ingalls. Dr. DiLella recommended sedentary work and an MRI. The petitioner prepared a Proof of Claim form on May 10th and reported sustaining a left knee injury when he bent down on his knees to inspect and apply a treatment to an area under a dishwasher and the inability to get up smoothly when attempting to stand. He reported that the next morning his knee was stiff and that he sought care at Ingalls on Monday after two days of discomfort.

On July 10th, the petitioner sought care with Dr. Michael Foreman at South Holland Medical Center and reported a work-related left knee injury on March 30, 2012, with increased pain the next day. Dr. Foreman provided pain medication, recommended physical therapy and no work. The petitioner had physical therapy from July 11th through September 20th. An MRI on July 18th revealed a tear of the posterior horn of the medial meniscus. On August 15th, the petitioner saw Dr. Igor Laubanauskus, who recommended an arthroscopic medial meniscectomy.

On November 5th, pursuant to Section 12, the petitioner was evaluated by Dr. Bryan Neal, who noted that the petitioner was uncertain regarding his injury date and believed it could have been on March 23, 2012, but he didn't have a traumatic event. Dr. Neal opined that the petitioner's left knee condition was related to arthritis and not any specific meniscal tear or work injury.

FINDING REGARDING THE DATE OF ACCIDENT AND WHETHER THE PETITIONER'S ACCIDENT AROSE OUT OF AND IN THE COURSE OF HIS EMPLOYMENT WITH THE RESPONDENT:

Based upon the testimony and the evidence submitted, the petitioner failed to prove that he sustained an accident on March 23, 2012, arising out of and in the course of his employment with the respondent. The medical evidence does not support the petitioner's claim of a left knee injury on March 23, 2012, or an injury arising out of his employment duties. The varying accounts given by the petitioner of the cause of his left knee symptoms is most troublesome, especially in light of his initial report of an unknown cause for his left knee symptoms, his denial of a work injury and his report of gradual symptoms for a week. Coupled with the specific and detail description as to the date of injury he prepared for his Proof of Claim on May 10, 2012, and the history to Dr. Foreman on July 10, 2012, it is clear that March 23, 2012, was not the date the petitioner's left knee symptoms began and that he is unable to prove that his left knee condition arose out of his work duties. The petitioner's request for benefits is denied and the claim is dismissed.

FINDINGS REGARDING WHETHER TIMELY NOTICE WAS GIVEN TO THE RESPONDENT:

The petitioner's supervisor, Andrew Callaghan, denied being notified of a work injury. The petitioner failed to prove that the respondent received timely notice of a work injury on March 23, 2012.

STATE OF ILLINOIS)
) SS.
 COUNTY OF MADISON)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Tracy Riley,

Petitioner,

vs.

Kraft Foods,

Respondent.

14IWCC0175

NO: 11 WC 45328

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, temporary total disability, permanent disability, medical expenses and notice, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 24, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

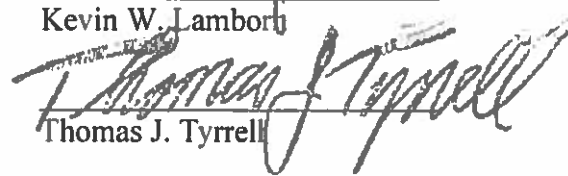
DATED: MAR 13 2014



Daniel R. Donohoo



Kevin W. Lambert



Thomas J. Tyrrell

DRD:bjg
 0-2/25/2014
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ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0175

RILEY, TRACY

Employee/Petitioner

Case# 11WC045328

KRAFT FOODS

Employer/Respondent

On 7/24/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

4463 GALANTI LAW OFFICES PC
LESLIE COLLINS
PO BOX 99
EAST ALTON, IL 62024

0560 WIEDNER & MCAULIFFE LTD
MARY C SABATINO
ONE N FRANKLIN ST SUITE 1900
CHICAGO, IL 60606

STATE OF ILLINOIS)
)SS.
 COUNTY OF Madison)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION**

Tracy Riley
 Employee/Petitioner

Case # 11 WC 45328

v.

Consolidated cases: _____

Kraft Foods
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joshua Luskin**, Arbitrator of the Commission, in the city of **Collinsville**, on **May 28th, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☒ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other _____

FINDINGS

On **November 15, 2011**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment.

Timely notice of the asserted accident *was* given to Respondent.

Petitioner's current condition of ill-being *is not* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$42,848.00**; the average weekly wage was **\$824.00**.

On the date of accident, Petitioner was **43** years of age, *married* with **0** dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *is not liable for* reasonable and necessary medical services.

Respondent shall be given a credit of **\$0** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$0**.

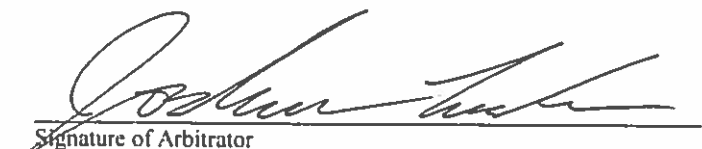
Respondent is entitled to a credit of **\$0** under Section 8(j) of the Act.

ORDER

For reasons set forth in the attached decision, benefits under the Act are denied.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.


Signature of ArbitratorJuly 24, 2013
Date

JUL 24 2013

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TRACY RILEY,

Petitioner,

vs.

KRAFT FOODS,

Respondent.

14IWCC0175

No. 11 WC 45328

ADDENDUM TO ARBITRATION DECISION

STATEMENT OF FACTS

The petitioner is a woman, 43 years old on the asserted date of loss of November 15, 2011. She works for Kraft Foods, beginning employment with them in 2000. For the last two years she worked as a pouch machine operator, and worked in other positions before that time. She presently works an 8-hour shift without overtime. She asserts repetitive trauma causing bilateral cubital tunnel syndrome. The petitioner acknowledged a prior history of carpal tunnel syndrome approximately ten years before this claim, which resulted in bilateral carpal tunnel release surgery. The petitioner testified she began having elbow symptoms in approximately February 2011.

The petitioner testified as a pouch machine operator, she is responsible for two machines. She checks and scoops out empty Capri-Sun pouches to ensure they are sealed. She scoops out eight pouches per hour (four per machine), which takes 1-2 seconds per pouch which involves a swiping motion with a spoon. She also stretches out empty boxes to put into the machine, up to twelve boxes per machine per hour. She testified it takes "5 seconds maybe" to stretch a box. She noted that some of the boxes are previously stretched, which reduces the number of stretching boxes. In addition to these tasks, she is responsible for keeping track of the machines' efficiency and production levels on a clipboard. She acknowledged that in between the stretching and spooning activities, she performed other tasks or waited for the machine to process. Her supervisor, Jason Myer, confirmed the job duties. He testified that the boxes that had been recycled did not require stretching, and only the new boxes did. He also noted that most of the boxes are previously used. He testified that approximately forty minutes per hour was spent not stretching or spooning, but rather monitoring the machinery and visually inspecting the product.

The medical records submitted show that the petitioner initially saw Dr. Knapp at Gateway Occupational Health Services on July 6, 2011. She reported bilateral hand and finger complaints of pain and numbness over approximately nine months, left worse than right. She denied any direct trauma and noted a prior history of carpal tunnel syndrome

approximately nine years prior, for which she had undergone surgery. Dr. Knapp instructed her to use over the counter medication and gave her night splints, and discharged her to seek care with an orthopedist, Dr. Rotman. RX5.

On July 14, 2011, the petitioner saw Dr. Rotman. She described right thumb and index finger pain and triggering, with substantial tingling in the left hand but less pain. He noted her job description and discussed it with her. He noted "it is difficult to say if there is any evidence of a work-related injury, considering the light nature of her work activities." He noted her symptoms were not classic for ulnar nerve compression but that it was unusual for recurrence of carpal tunnel syndrome. He recommended EMG studies, and noted that the original EMG studies from her treatment with Dr. Beatty could not be secured. See RX3.

The petitioner underwent a nerve conduction study with Dr. Khariton on July 20, 2011. It revealed mild bilateral neuropathy at each wrist, but normal bilateral ulnar motor-sensory and radial sensory nerve conduction. A left median to ulnar anastomosis was noted. RX3.

On July 28, 2011, Dr. Rotman reviewed the EMG study and diagnosed "very minor borderline carpal tunnel" with "no evidence of cubital tunnel or any abnormal values in the ulnar nerve distribution." He noted the median nerve findings "may be residual from a much more severe carpal tunnel condition preoperatively after already previous releases." RX3. He assessed her as having residual symptoms stemming from her prior carpal tunnel release surgery. He provided the petitioner with a steroidal injection into the right wrist and instructed her to return in six weeks. RX3. The petitioner did not return to Dr. Rotman.

She sought treatment with Dr. Mark Eavenson, a chiropractor. Dr. Eavenson's reports were introduced as PX1. The Arbitrator notes these reports are incomplete; they cover a period from November 15, 2011, through March 29, 2012. However, the petitioner treated with Dr. Eavenson prior to November 15, 2011, and he prescribed x-rays and an EMG. The x-rays were apparently done on November 2 and apparently demonstrated arthritis (see the intake questionnaire for Dr. Paletta, PX2 p.12). The EMG study was performed by Dr. Phillips on November 14, 2011 at Dr. Eavenson's referral. See PX3-4. It does not appear Dr. Phillips was advised of the July 2011 EMG, or that the results were compared. Dr. Phillips interpreted the results as "relatively mild bilateral demyelinating ulnar neuropathies" and noted "the observations vis-à-vis the median nerves across the wrists are most consistent with residual from previously severe carpal tunnel." PX3.

Dr. Eavenson thereafter referred the petitioner to Dr. Paletta. She presented on November 30, 2011. She did not report Dr. Rotman's treatment, but did report the injection into the carpal tunnel. She reported intermittent pain in both elbows with numbness and tingling into the fingers. Dr. Paletta assessed bilateral cubital tunnel syndrome and recommended surgery or night splints and observation. PX2. The petitioner elected to proceed with surgical intervention.

The petitioner underwent ulnar transposition surgery on the right elbow on February 14, 2012, and on the left elbow on March 1, 2012. PX5-6. She saw Dr. Paletta postoperatively. On April 25, 2012, she reported feeling “dramatically better” and he released her to full duty and MMI at that time. PX2.

The respondent commissioned a Section 12 records review with Dr. Craig Beyer on November 5, 2012. See RX1-2. Dr. Beyer noted that the job activities depicted (RX4) did not appear particularly rigorous or repetitive, given the spacing of the tasks in any given hour. He further noted that the tasks involved much more finger work than elbow movement, which would not be consistent with cubital tunnel syndrome. He also noted non-work-related factors including age, body habitus, gender and smoking history. He concluded that her work activities had not accelerated or caused any condition of cubital tunnel syndrome. He also noted that chiropractic care was an unusual choice to have pursued, as it had no impact on elbow neuropathy. Dr. Beyer maintained those positions in deposition (RX2).

Dr. Paletta testified in deposition (PX7), opining that the petitioner’s work activities had caused her condition. He admitted in deposition that he had not been aware of Dr. Rotman’s evaluation or treatment and had not been aware of the negative EMG from July 2011. He was not asked to compare the EMG results. He admitted further that he had not reviewed the job description which Dr. Rotman and Dr. Beyer had reviewed. On cross-examination, he admitted he did not know how many boxes the petitioner stretched, or the weight of the boxes. He admitted that regarding the spooning out of the pouches, he did not know the weight or size of the probe, or how often she was required to do that activity.

The petitioner has continued to work in her usual capacity for the respondent. She reported feeling “great” since her medical release.

OPINION AND ORDER

Accident and Causal Relationship

A review of the exhibits and depositions submitted shows that the petitioner is relying on a repetitive trauma theory, as opposed to an acute injury. In cases relying on the repetitive trauma concept, the claimant generally relies on medical testimony to establish a causal connection between the claimant’s work and the claimed disability. See, e.g., *Peoria County Bellwood*, 115 Ill.2d 524 (1987); *Quaker Oats Co. v. Industrial Commission*, 414 Ill. 326 (1953). When the question is one specifically within the purview of experts, expert medical testimony is mandatory to show that the claimant’s work activities caused the condition of which the employee complains. See, e.g., *Nunn v. Industrial Commission*, 157 Ill.App.3d 470, 478 (4th Dist. 1987).

Examining Dr. Paletta's deposition testimony in this case, he admitted that he was effectively unaware of any of the pertinent specifics of the petitioner's job duties. He could not detail what precise motions the petitioner engaged in, the frequency or spacing of the motions, or the force required. In contrast, both Dr. Rotman and Dr. Beyer were provided with a detailed job analysis which appears to be more accurate than the history Dr. Paletta notes in his original appointment with the claimant. Dr. Rotman also spoke with the petitioner at length specifically regarding the petitioner's job duties. The job analysis appears more coherent with the numbers provided by the claimant at trial and the credible testimony of Jason Myer. Dr. Paletta's analysis of the kinds of stressors the petitioner was exposed to appears to be based on flawed information. Moreover, Dr. Paletta was also given an incomplete history of the petitioner's medical treatment to that point. This incomplete and inaccurate history provides a faulty foundation for his opinions. Furthermore, all the physicians noted additional risk factors that could explain the conditions arising, such as smoking.

Treating physicians are traditionally provided a degree of deference against Section 12 examiners in assessing causal connection. However, in the present case, the disagreement is not simply between a treating physician and a Section 12 examiner, but rather between two treating physicians (Drs. Rotman and Paletta), with whom one is joined in his conclusions by a Section 12 reviewer. Moreover, not merely was Dr. Paletta given an inaccurate foundation on which to base his opinion, but Dr. Rotman and Dr. Beyer based their opinion on a far more accurate and complete description of the petitioner's work and medical history.

The Arbitrator finds the conclusions of petitioner's first treating physician, Dr. Rotman, and respondent's Section 12 examiner, Dr. Beyer, more persuasive than that of Dr. Paletta. Given the stronger foundation they possessed as the basis for their conclusions, it would be unreasonable, and against the manifest weight of the evidence, to accept Dr. Paletta's opinion as being more reliable than their opinions. The claimant has failed to prove to a medical and surgical certainty via expert testimony that the condition regarding her elbows is causally linked.

Notice

This issue is moot given the above analysis.

Medical Services Provided

As these are not causally related, they are denied. The Arbitrator further notes that Dr. Paletta acknowledged that chiropractic care would be of no benefit in this case, and accordingly any bills from Dr. Eavenson would be disallowed even if the cubital tunnel syndrome was in fact related.

STATE OF ILLINOIS)
) SS.
 COUNTY OF MADISON)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Mary Pat Bacheldor,

Petitioner,

14IWCC0176

vs.

NO: 12 WC 18644

Wal-Mart,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses and prospective medical care, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 24, 2014 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

14IWCC0176

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

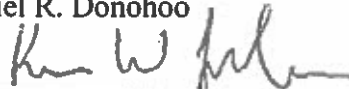
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

No bond is required for removal of this cause to the Circuit Court by Respondent. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

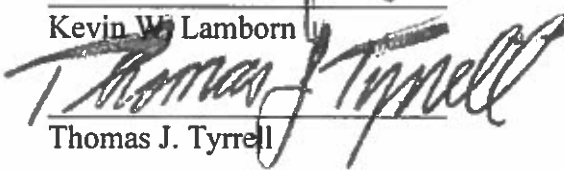
DATED: MAR 13 2014



Daniel R. Donohoo



Kevin W. Lamborn



Thomas J. Tyrrell

DRD:bjg
0-2/25/2014
052

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

14IWCC0176

BACHELDOR, MARY PAT

Employee/Petitioner

Case# **12WC018644**

WAL-MART

Employer/Respondent

On 5/24/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

4463 GALANTI LAW OFFICES
LESLIE N COLLINS
PO BOX 99
EAST ALTON, IL 62024

2593 GANAN & SHAPIRO PC
AMANDA WATSON
411 HAMILTON BLVD SUITE 1006
PEORIA, IL 61602

STATE OF ILLINOIS)
)SS.
 COUNTY OF MADISON)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION
 19(b)

Mary Pat Bacheldor
 Employee/Petitioner

Case # 12 WC 18644

v.

Consolidated cases: _____

Wal-Mart
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Collinsville, on April 18, 2013. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ Is Petitioner entitled to any prospective medical care?
- L. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other _____

14IWCC0176

FINDINGS

On the date of accident, May 15, 2012, Respondent was operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship did exist between Petitioner and Respondent.

On this date, Petitioner did sustain an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is causally related to the accident.

In the year preceding the injury, Petitioner earned \$16,707.38; the average weekly wage was \$321.30.

On the date of accident, Petitioner was 46 years of age, single with 1 dependent child(ren).

Respondent has not paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$0.00 for TTD, \$0.00 for TPD, \$0.00 for maintenance, and \$0.00 for other benefits, for a total credit of \$0.00.

Respondent is entitled to a credit of amounts paid under Section 8(j) of the Act.

ORDER

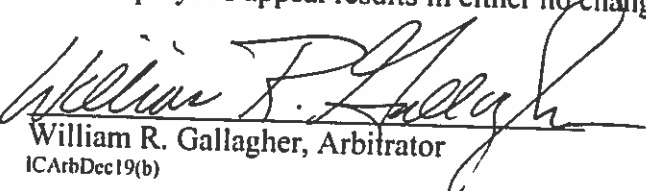
Respondent shall pay for reasonable and necessary medical services as identified in Petitioner's Exhibit 7, as provided in Sections 8(a) and 8.2 of the Act subject to the fee schedule. Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit as provided in Section 8(j) of the Act.

Respondent shall authorize and make payment for prospective medical treatment as recommended by Dr. Lehman, including, but not limited to, right shoulder surgery.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.


William R. Gallagher, Arbitrator
ICArbDec19(b)

May 17, 2013
Date

MAY 24 2013

Petitioner filed an Application for Adjustment of Claim which alleged she sustained an accidental injury arising out of and in the course of her employment for Respondent on May 15, 2012. According to the Application, Petitioner fell while getting into a rolling chair and sustained injuries to her right shoulder. This case was tried as a 19(b) proceeding and Petitioner sought an order for payment of medical bills and prospective medical treatment. Respondent disputed liability on the basis of accident and causal relationship.

Petitioner worked for Respondent in the optical department as an Optician Technician and her job duties required her to assist patients with pre-testing procedures, provide customer service, etc. On May 15, 2012, Petitioner had just recently returned to work following a right foot injury she previously sustained and she was on light duty. Because Petitioner had sustained a foot injury, she was wearing tennis shoes and ambulating with the use of a cane.

On May 15, 2012, one of the machines that is used to test eyesight was out of paper and Petitioner was attempting to observe her supervisor, Patricia Sinks, refill the machine with paper. The machine was on a table and Petitioner put her cane down and proceeded to walk around the table to observe how the paper was placed into the machine. Petitioner then attempted to sit on a chair which was adjacent to the table and customarily used by patients. This chair had no arms and was on rollers and when Petitioner put her right hand on it, the chair gave way causing Petitioner to fall injuring her right shoulder. Petitioner described the surface of the floor as being wooden/shiny and that there were neither chair mats nor carpeting or any other floor coverings.

Petitioner completed and signed a document entitled "Associate Incident Report" (Respondent Exhibit 2) which indicated that Petitioner was watching the manager install tape (paper) in the field testing machine, and that she reached behind with her left hand to hold the chair which was on wheels, that she started to sit and the chair went out from under her causing her to fall and injure her right shoulder.

Patricia Sinks appeared and testified on behalf of the Respondent. She confirmed that she was Petitioner's supervisor and, on May 15, 2012, was in the process of changing paper in a machine used to test eyesight. Sinks testified that Petitioner was standing on the side of the table where the patient would customarily be and was observing her put paper in the machine. Sinks testified that the chair was on wheels but had no defects and that the floor was concrete covered with a vinyl floor covering that looked like wood. Sinks testified that the Petitioner attempted to sit down and missed the chair and fell sustaining injuries as a result thereof.

Prior to the accident, Petitioner was treated by Dr. Anne Christopher for the work-related right foot injury. While being treated for this injury Petitioner did have some right shoulder complaints.

Following the accident of May 15, 2012, Petitioner was seen by both Mark Eavenson, a chiropractor, and Dr. Richard Lehman, an orthopedic surgeon. Dr. Lehman previously treated Petitioner for her right foot injury as well. On June 22, 2012, an MRI was performed at Dr. Eavenson's direction which revealed a right rotator cuff tear. When Dr. Lehman saw Petitioner

on June 26, 2012, he examined her and reviewed the MRI scan opining that Petitioner had sustained a right rotator cuff tear as a result of the work-related accident of May 15, 2012. Dr. Lehman recommended arthroscopy and right rotator cuff repair.

Dr. Lehman was deposed on February 5, 2013, in regard to both the right foot and right shoulder cases. In regard to the right shoulder case, Dr. Lehman testified that Petitioner may have had a pre-existing right rotator cuff tear; however, he stated that the mechanics of the injury sustained by Petitioner on May 15, 2012, could aggravate a pre-existing tear.

Petitioner has continued to work light duty for Respondent and has continued to receive physical therapy for her right shoulder condition. She does want to proceed forward with the surgery as recommended by Dr. Lehman.

Conclusions of Law

In regard to disputed issue (C) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner sustained an accidental injury arising out of and in the course of her employment for Respondent on May 15, 2012, to her right shoulder.

In support of this conclusion, the Arbitrator notes the following:

There is no significant dispute as to the circumstances of the accident of May 15, 2012. The testimony of both the Petitioner and Respondent's witness, Patricia Sinks, are consistent with one another in their description of the circumstances of this accident.

The Arbitrator acknowledges that for an injury to have arisen out of the employment, the risk of injury must be a risk peculiar to the work or a risk in which the employee is exposed a risk of a greater degree than what the general public is exposed to by reason of his/her employment. Orsini v. Industrial Commission, 509 N.E.2d 1005 (Ill. 1987).

The Arbitrator finds the case of Poole v. Cook County Medical Examiner, 12 IWCC 0866, to be analogous to the instant case. In the Poole case, the Petitioner was seated in an office chair with rollers, he attempted to reach over to get a file from a file cabinet, and the rolling chair slid out from under him of causing him to sustaining injuries. In affirming the Arbitrator's decision, the Commission found that wheeled, swiveling office chairs are less stable than most chairs and that one who sits at work in such a chair on a linoleum surface is exposed to risks greater than that to which a member of the general public is exposed. In the instant case, the Petitioner sustained injuries when she attempted to sit in an armless chair on rollers on a concrete floor with a vinyl floor covering while she was in the process of observing how to load paper into the machine.

The Arbitrator finds the case of Bailey v. Cook County Department of Corrections, 12 IWCC 0399, to be distinguishable from the instant case. The Bailey case involved a Correctional Officer who was sitting on a roller chair without arms, reached across the desk to retrieve some papers and the chair flew out from under her. In the Bailey case, Petitioner alleged that it was her

act of reaching across the desk that imposed a greater risk of injury, not the fact that the chair rolled out from under her.

Accordingly, the Arbitrator concludes that Petitioner was exposed to a risk greater than that to which a member of the general public is exposed.

In regard to disputed issue (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner's current condition of ill-being is causally related to the accident of May 15, 2012.

In support of this conclusion the Arbitrator notes the following:

Dr. Lehman opined that there was a causal relationship between the accident of May 15, 2012, and the right rotator cuff tear and there is no medical opinion to the contrary.

In regard to disputed issue (J) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that all of the medical services provided to Petitioner were reasonable and necessary and that Respondent is liable for payment of the medical bills associated therewith.

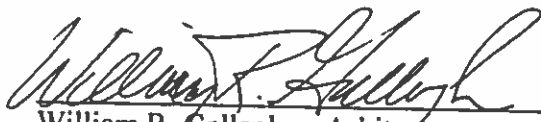
Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 7, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

In regard to disputed issue (K) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner is entitled to prospective medical treatment including, but not limited to, the right shoulder surgery recommended by Dr. Lehman.

In support of this conclusion the Arbitrator notes the following:

Dr. Lehman has recommended that Petitioner undergo right rotator cuff surgery and there is no medical opinion to the contrary.



William R. Gallagher, Arbitrator

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Paul Outlaw,

Petitioner,

vs.

NO: 08 WC 24104

University of Illinois at Chicago,

Respondent.

ORDER OF RECALL UNDER SECTION 19(f)

A Petition under Section 19(f) of the Illinois Workers' Compensation Act to Correct Clerical Error in the Decision of the Commission dated March 14, 2014, having been filed by Petitioner herein. Upon consideration of said Petition, the Commission is of the Opinion that it should be granted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated March 14, 2014 is hereby vacated and recalled pursuant to Section 19(f) for a clerical error contained therein.

IT IS FURTHER ORDERED BY THE COMMISSION that a Corrected Decision and Opinion on Review shall be issued simultaneously with this Order.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: APR 02 2014

TJT:yl

51


Thomas J. Tyrrell

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input type="checkbox"/>	PTD/Fatal denied
<input checked="" type="checkbox"/>	None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

PAUL B. OUTLAW,

Petitioner,

vs.

NO: 08 WC 24104
14 IWCC 177

UNIVERSITY OF ILLINOIS AT CHICAGO,

Respondent.

**CORRECTED DECISION AND OPINION ON REVIEW
UNDER SECTIONS 8(A), 16, 19(K) AND 19(L)**

This cause comes before the Commission on Petitioner's Sections 8(a), 16, 19(k) and 19(l) petition, filed on January 16, 2013. A hearing on Petitioner's petition was held by Commissioner Tyrrell on February 20, 2013. The issues under Petitioner's petition were whether Petitioner is entitled to prospective medical care and whether Petitioner is entitled to penalties and attorneys' fees. The Commission, after having considered the record, hereby finds that Petitioner is entitled to prospective medical care, penalties and attorneys' fees. Petitioner's Sections 8(a), 16, 19(k) and 19(l) petition is granted.

FINDINGS OF FACT

Petitioner worked as an electrician for Respondent. On May 8, 2008, it was stipulated that he sustained an accident when he was struck by a bus and suffered a right rotator cuff tear injury, which was operated on two months later. Petitioner eventually returned to work with an irreparable massive rotator cuff tear and with significant restrictions. On March 2, 2009, Dr. Goldberg gave Petitioner permanent restrictions of no lifting, pushing or pulling over 30 pounds and no overhead work, specifying that Petitioner's work should be performed at the shoulder level or below.

The Arbitrator heard Petitioner's case on March 1, 2010. The Arbitrator found Petitioner's condition of ill being was causally connected to the work accident and awarded Petitioner a wage differential beginning on March 1, 2010, because the injuries sustained caused a loss of earnings, and medical bills per the fee schedule as submitted by Petitioner at the hearing. The Arbitrator's decision was not appealed. Petitioner returned to work for Respondent after the hearing and worked until he retired on May 1, 2010.

Petitioner testified about his worsening right shoulder condition on February 20, 2013. Since Petitioner last testified, he said he always has right shoulder pain. Moreover, Petitioner testified that his right shoulder has deteriorated since he last saw Dr. Goldberg. Petitioner testified he feels pressure on the area where his doctors previously attempted to surgically repair his shoulder and added the pressure is getting worse. He explained that it feels like something in the shoulder is pushing down on the nerve or tissue on the top of his right shoulder. Petitioner also began experiencing pains he described as "electrical shocks" around March 2012. He was not working at that time. Petitioner explained it feels like he gets electric shocks that go from his shoulder down to his wrist and fingers. Petitioner explained he did not pay attention to the shock sensations until he realized they were not going away. These shocks are intermittent but became more prevalent in the months before the February 2013 hearing. Petitioner testified that he experiences the shocks depending on how he moves his arm. Petitioner explained that when he tries to lift his right arm away from his body up to 90 degrees, he cannot hold his arm there long, he has to bring it down and then he experiences a tingling sensation. Petitioner described the tingling sensation as going down his right arm to his wrist and occurs immediately.

Petitioner last saw Dr. Goldberg in March 2009 and did not seek treatment for his right shoulder from March 2009 through November 2012. Dr. Goldberg initially treated Petitioner for his injury in 2008. He had previously diagnosed Petitioner with an irreparable chronic rotator cuff injury. Petitioner testified that in November 2012 he made an appointment with Dr. Goldberg for the electric shocks he was experiencing. Respondent authorized that appointment. Petitioner saw Dr. Goldberg on November 9, 2012. Dr. Goldberg again diagnosed Petitioner with an irreparable chronic rotator cuff injury, gave Petitioner the same work restrictions, and ordered an MRI. Respondent approved the MRI, which Petitioner had on November 21, 2012. The MRI findings included new thickening of the inferior glenohumeral ligament that can be seen with adhesive capsulitis. Petitioner returned for a second appointment with Dr. Goldberg on November 26, 2012, to review the MRI. Dr. Goldberg noted that he was worried about a possible outbreak of plexus compression and prescribed an EMG of the right upper extremity. Petitioner had the EMG on December 21, 2012, which Respondent authorized. Petitioner testified that he scheduled a third appointment to see Dr. Goldberg for January 2013.

Petitioner went to the appointment; however, he was told he could not see Dr. Goldberg because Respondent had not approved it. Respondent authored a letter on January 29, 2013, stating that it was denying further medical treatment as there was no medical evidence that Petitioner's continued shoulder complaints were causally connected to the May 2008 accident.

Petitioner testified that he would like to continue to treat with Dr. Goldberg.

CONCLUSIONS OF LAW

The Commission concludes that Petitioner's current condition in his right shoulder and his need for additional treatment as recommended by Dr. Goldberg is causally related to the work accident he sustained on May 8, 2008. We find that Petitioner sustained his burden of proof under Section 8(a) that his right shoulder symptoms worsened. The Commission further awards Petitioner penalties and attorneys' fees under Sections 19(k), 19(l) and 16.

The Commission holds that Petitioner is entitled to prospective medical treatment for his right shoulder condition. Petitioner credibly testified that he continues to experience pain in his right shoulder from his irreparable rotator cuff tear since the injury. Petitioner testified that he is still restricted in how he can move his shoulder and how much weight he can lift. Petitioner's condition then deteriorated further. He now feels a pressure on the top of his right shoulder, the area previously operated on. Petitioner explained it feels like something is pushing down on his nerve or tissue. Additionally, his pain increased around March 2012 when he began experiencing electrical shock sensations that travelled from his shoulder, down his arm to his hand. The shocks became more prevalent and did not abate, so Petitioner sought additional medical treatment from the same physician, Dr. Goldberg, for his worsened condition. Petitioner did not suffer an intervening injury and his right shoulder condition was previously found to be causally connected to the work related injury on May 8, 2008.

Further, when Petitioner sought additional medical treatment for these new right shoulder issues, Respondent initially authorized follow up treatment with Dr. Goldberg. Petitioner underwent the testing procedures prescribed and is waiting for further approval to follow up with Dr. Goldberg. Respondent cannot initially authorize treatment, and then later refuse to pay for the previously authorized treatment provided and necessary follow up. Petitioner proved that his condition has worsened and he is entitled to additional medical treatment as prescribed by Dr. Goldberg for his right shoulder irreparable rotator cuff tear.

We also award Petitioner penalties and attorneys' fees. It is well established that the imposition of Section 19(k) penalties and Section 16 attorney's fees is discretionary, and that they are assessed when the delay of payment is deliberate or results from bad faith or improper purpose. McMahan v. Industrial Comm'n, 183 Ill. 2d 499, 515, 703 N.E.2d 545, 553 (1998); Mechanical Devices v. Industrial Comm'n, 344 Ill.App.3d 752, 766, 800 N.E.2d 819, 829 (2003). Section 19(l) penalties are in the nature of a late fee, and "the statute applies whenever the employer or its carrier simply fails, neglects, or refuses to make payment or unreasonably delays payment 'without good and just cause.'" McMahan, 183 Ill. 2d at 515, 702 N.E.2d at 552. See also Mechanical Devices, 344 Ill.App.3d at 763, 800 N.E.2d at 829. If the employer or its insurance carrier cannot show an adequate justification for its delay, additional compensation under Section 19(l) is mandatory. McMahan, 183 Ill. 2d at 515, 702 N.E.2d at 552; Mechanical

Devices, 344 Ill.App.3d at 763, 800 N.E.2d at 829.

The Commission finds that Respondent's actions were unreasonable and vexatious in this case. Respondent initially authorized Petitioner to seek additional medical treatment with Dr. Goldberg. Petitioner had two appointments with Dr. Goldberg in November 2012. Dr. Goldberg's note states that he is seeing Petitioner for his ongoing complaints for his right shoulder from the May 8, 2008, work injury. Respondent also authorized the MRI and EMG tests ordered by Dr. Goldberg. However, Respondent later refused to pay for the testing it had previously authorized. Respondent then refused to authorize and pay for additional medical treatment for Petitioner.

Before undergoing additional tests, Petitioner sent Respondent a letter on November 28, 2012, requesting authorization and payment for the MRI and EMG. Petitioner asked Respondent to provide a written reason if treatment was being denied. However, Respondent did not respond until January 29, 2013, after the services were authorized, charges incurred and then payment for the same summarily denied by Respondent. Respondent's actions put Petitioner in the position of being potentially liable for expensive medical treatment that Respondent previously authorized and then months later decided to not pay for. We hold that Respondent acted in an unreasonable and vexatious manner, and Petitioner is entitled to penalties and attorneys' fees.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's Section 8(a) petition for prospective medical treatment for his right shoulder as recommended by Dr. Goldberg is granted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner all medical expenses incurred by Petitioner for treatment for his work related injury under Section 8(a) and pursuant to the medical fee schedule.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's Petition for penalties under Section 19(k) and Section 19(l) and attorneys' fees under Section 16 is hereby granted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the sum of \$2,216.50 pursuant to Section 19(k) without further delay.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the sum of \$4,590.00 pursuant to Section 19(l) without further delay.

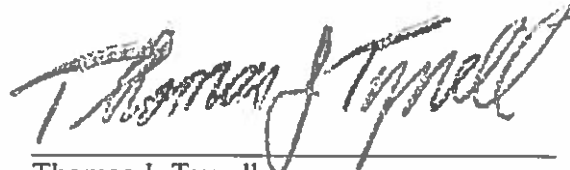
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the sum of \$1,361.30 in attorney's fees pursuant to Section 16 without further delay.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under Section 19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

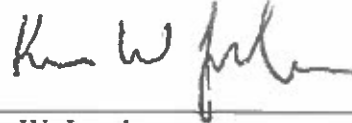
DATED: APR 02 2014
TJT: kg
R: 2/20/13
51



Thomas J. Tyrrell



Daniel R. Donohoo



Kevin W. Lamborn

STATE OF ILLINOIS)
) SS.
 COUNTY OF MCCLEAN)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION
 Nancy Grubel,
 Petitioner,

vs.

Learning Care Group Inc. d/b/a LaPetite Academy,
 Respondent,

NO: 11 WC 38637

14IWCC0178

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issue of the nature and extent of Petitioner's permanent disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 15, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

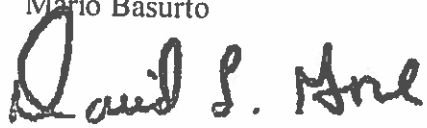
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$10,800.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAR 17 2014

MB/mam
 O:2/6/14
 43


 Mario Basurto


 David L. Gore


 Daniel R. Donohoo

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

GRUBEL, NANCY

Employee/Petitioner

Case# 11WC038637

14IWCC0178

LEARNING CARE GROUP INC D/B/A LaPETITE
ACADEMY

Employer/Respondent

On 7/22/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0564 WILLIAMS & SWEE LTD
STEVEN R WILLIAMS
2011 FOX CREEK RD
BLOOMINGTON, IL 61701

2593 GANAN & SHAPIRO PC
JESSICA M BELL
411 HAMILTON BLVD SUITE 1006
PEORIA, IL 61602

14IWCC0178

STATE OF ILLINOIS)

)SS.

COUNTY OF McLean)

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

**ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION**

Nancy Grubel

Employee/Petitioner

Case # **11 WC 38637**

v.

Consolidated cases: _____

Learning Care Group Inc d/b/a LaPetite Academy

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Stephen Mathis**, Arbitrator of the Commission, in the city of **Bloomington**, on **5/15/13**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other _____

FINDINGS

On **4/26/11**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$24,960.00**; the average weekly wage was **\$480.00**.

On the date of accident, Petitioner was **54** years of age, *single* with **0** dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **\$3,665.00** for TTD, **\$0.00** for TPD, **\$0.00** for maintenance, and **\$0.00** for other benefits, for a total credit of **\$0.00**.

Respondent is entitled to a credit of \$ under Section 8(j) of the Act.

ORDER

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of **\$316.86/week** for **11 3/7** weeks, commencing **9/21/11** through **12/9/11**, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from **9/21/11** through **present**, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall be given a credit of **\$3,665.00** for temporary total disability benefits that have been paid.

Permanent Partial Disability: Schedule injury

Respondent shall pay Petitioner permanent partial disability benefits of **\$288.00/week** for 37.625 weeks, because the injuries sustained caused the 17.5% loss of the **right leg**, as provided in Section 8(e) of the Act.

Medical benefits

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of **\$230.00** to **OSF Medical Group**, **\$768.00** to **Central Illinois Orthopedic Surgery**, **\$99.00** to **Neuro Ortho Rehab**, and **\$8,258.00** to **Bloomington Normal Healthcare Surgicenter** as provided in Sections 8(a) and 8.2 of the Act. The Respondent shall pay these charges pursuant to the Fee Schedule.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

14IWCC0178

S. J. Mathis
Signature of Arbitrator

7-15-13
Date

ICarbDec p. 2

JUL 22 2013

L. What is the nature and extent of the injury?

The Petitioner testified that on April 26, 2011 she was working for La Petite. On this date, the Petitioner leaned against a fence to let a child go through on his tricycle. As she leaned on the fence, the fence gave way and she fell twisting her knee.

On April 28, 2011 the Petitioner sought medical treatment. Dr. Cash examined the Petitioner. He noted the Petitioner was injured at work and he noted a twist. During his examination he noted range of motion and swelling of the right leg. There is also tenderness. (px2)

The Petitioner underwent a MRI on June 24, 2011. The MRI showed a radial tear at posterior horn of the lateral meniscus. There is a degenerative tear in the posterior horn of the medial meniscus. (px3)

On July 14, 2011 the Petitioner saw Dr. Keller. Dr. Keller noted a work related injury at La Petite Academy when the Petitioner was leaning against a fence and fell and twisted her right knee. During the examination he noted tenderness at the lateral joint line, effusion, patellofemoral crepitus and decreased range of motion of the right knee. (px4)

On September 28, 2011 the Petitioner underwent a surgical procedure. Dr. Keller performed a right knee arthroscopy medial and lateral meniscectomy, debridement of patella/trochlea, and debridement/chondroplasty of lateral femoral condyle. He diagnosed right knee medial and lateral meniscus tears, Grade 3 chondromalacia trochlea, and Grade 3 out of 4 chondromalacia lateral femoral condyle. (px5)

On October 26, 2011 the Petitioner underwent a strength test. The right knee had decreased strength and extension and flexion when compared to the left knee. (px6)

On November 8, 2011 the Petitioner was seen by Dr. Keller. He noted discomfort. There is slightly decreased strength at 4+ out of 5. (px8)

During a physical therapy note on December 7, 2011 the Petitioner complained of stiffness. She had discomfort at the end range of passive flexion. (px9)

In a physical therapy update dated December 9, 2011 the right knee still had occasional pain. There was some catching in the knee. (px10)

Dr. Keller authored a report dated May 1, 2013. He stated that the Petitioner was leaning against a fence, fell and twisted her right knee. A MRI showed a medial and lateral meniscus tear. He performed a surgical procedure on September 28, 2011. This included a right knee arthroscopy medial and lateral meniscectomy and debridement of the patella trochlea and debridement of the lateral femoral condyle. Dr. Keller stated that there is a causal relationship between the Petitioner's injury and her condition of ill-being.

The Petitioner continued to have difficulty with stairs, squatting, kneeling and getting up and down off the floor.

Based on the above the Arbitrator awards 17.5% loss of use to the Petitioner's leg.

STATE OF ILLINOIS)
) SS.
 COUNTY OF MADISON)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify <input type="checkbox"/> up	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Thomas K. Mayer,
 Petitioner,

vs.

NO: 07 WC 42456

Cintas Corporation,
 Respondent,

14IWCC0179

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of temporary total disability and additional compensation/attorneys' fees and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission finds in addition to the temporary total disability periods the Arbitrator found Petitioner was entitled to Petitioner is entitled to additional temporary total disability from September 27, 2007 through October 21, 2007 and from February 6, 2008 through March 9, 2008 for an additional total of 8-1/7 weeks. While the off work notes from the various doctors were less than clear, the Commission finds during these periods that Petitioner's condition had not yet stabilized and Petitioner had not yet reached a state of maximum medical improvement and as such he is entitled to additional temporary total disability benefits.

The Commission further finds that Respondent's behavior was not unreasonable or vexatious and as such Petitioner is not entitled to additional compensation/attorneys' fees under Sections 19(l), (k) & 16 of the Act. The Commission finds that when any delays were pointed out they were rectified in short order and there was no unreasonable behavior on the part of the Respondent or its representatives.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$554.69 per week for a period of 117 weeks, that being the period of

14IWCC0179

temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$554.69 per week for a period of 39-3/7 weeks for maintenance, as provided in §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner is owed \$1,352.43 in wage differential and commencing on May 23, 2012 Respondent pay to Petitioner the sum of \$529.20 per week for the duration of his disability, as provided in §8(d)1 of the Act, for the reason that the injuries sustained permanently incapacitated Petitioner from pursuing the duties of his usual and customary line of employment.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit of \$85,586.16 for temporary total disability and maintenance payments and \$16,179.61 for temporary partial disability payments for a total credit of \$101,765.77 paid to or on behalf of Petitioner on account of said accidental injury.

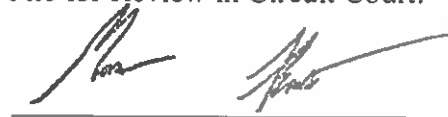
Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: **MAR 17 2014**

MB/jm

O: 1/23/14

43



Mario Basurto



David L. Gore



Daniel Donohoo

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

MAYER, THOMAS K

Employee/Petitioner

Case# 07WC042456

14IWCC0179

CINTAS CORPORATION

Employer/Respondent

On 7/5/2012, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.15% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

4599 SCHUCHAT, COOK, & WERNER
CLARE R BEHRLE
1221 LOCUST ST 2ND FLR
ST LOUIS, MO 63119

2593 GANAN & SHAPIRO PC
AMANDA WATSON
411 HAMILTON BLVD SUITE 1006
PEORIA, IL 61602

14IWCC0179

STATE OF ILLINOIS)

)SS.

COUNTY OF Madison)

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)(18)) |
| <input checked="" type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION ARBITRATION DECISION

Thomas K. Mayer

Employee/Petitioner

Case # 07 WC 42456

v.

Consolidated cases: N/A**Cintas Corporation**

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Joshua Luskin, Arbitrator of the Commission, in the city of Collinsville, on May 23, 2012. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ What temporary benefits are in dispute?
☒ TPD ☒ Maintenance ☒ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☒ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other

FINDINGS

On April 17, 2007, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

Petitioner's average weekly wage was \$832.04. The parties agree that if the claimant was still employed by the respondent in his pre-injury position, the petitioner's current average weekly wage would be \$971.00.

On the date of accident, the petitioner was 43 years of age, *single* with **2** dependent children under 18.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has* paid all appropriate charges for all reasonable and necessary medical services and agreed to be responsible for causally related medical bills pursuant to the fee schedule.

Respondent shall be given a credit of \$85,586.16 for TTD and Maintenance, and \$16,179.61 for TPD, for a total credit of \$101,765.77.

Respondent may take credit under Section 8(j) of the Act for any amounts paid pursuant to a qualified group insurance plan. The parties agreed that Section 8(j) rights were not waived by the respondent.

ORDER


SEE ATTACHED DECISION

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



Signature of Arbitrator



Date

JUL -5 2012

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

THOMAS K. MAYER,)	
)	
Petitioner,)	
)	
vs.)	No. 07 WC 42456
)	
CINTAS CORPORATION,)	
)	
Respondent.)	

ADDENDUM TO ARBITRATION DECISIONSTATEMENT OF FACTS

The claimant began working for the respondent in April 2006 as a sales service representative, providing customers with supplies, uniforms and floor mats. On April 17, 2007, the petitioner was bending over to lift a floor mat and felt pain in his abdomen below his sternum, which worsened throughout the day. He reported the injury to his supervisor and sought medical care the following day. Dr. Terschluse diagnosed a hernia and performed surgical repair on April 20, 2007. Dr. Terschluse released the petitioner to light duty as of Monday, May 14. The petitioner did return to light duty at that time and was thereafter released to full duty on June 18. See PX1, PX2.

The claimant returned to Dr. Terschluse on August 1, 2007, complaining of recurrent pain. Dr. Terschluse prescribed him off work until August 5. On August 22, the petitioner noted ongoing discomfort, but there was no evidence of recurrent hernia. He was discharged from care at that time. On September 5, the petitioner returned noting pain that was continuing despite medication. Dr. Terschluse prescribed medication and physical therapy but reassured the petitioner "that nothing serious is going on." PX2.

The claimant saw Dr. Pruett on September 12, 2007. Dr. Pruett diagnosed a recurrent hernia and recommended surgery and light duty. See PX3.

On September 19, 2007, the claimant saw Dr. Ahmed. Dr. Ahmed diagnosed a possible recurrent hernia and recommended a CT scan to confirm. The CT scan was done that day and demonstrated no evidence of a recurrent hernia. See PX4. The medical records of Dr. Ahmed contain two different work restriction notes dated September 26, 2007; one prescribed the petitioner a return to work on September 27, and the other prescribed him off work until October 22. See PX4.

On October 15, the claimant saw Dr. Terschluse and noted he had seen Dr. Pruett and Dr. Ahmed for second opinions, and Dr. Terschluse referred the claimant to Dr. Velling for a pain evaluation. A letter dated October 16, 2007 indicated the claimant could "continue" to work full duty. PX2.

141WCC0179

The claimant then saw Dr. Ramshaw on December 5, 2007. Dr. Ramshaw diagnosed a failure of the mesh and thereafter performed surgical repair with mesh placement on January 10, 2008. On February 6, 2008, Dr. Pruett saw the claimant in follow-up from the surgery. The claimant noted dramatic improvement in the symptoms following surgery. Following examination, Dr. Pruett discharged the claimant from care, noting he may resume normal activity, including work activity, as tolerated. See PX6.

The petitioner returned to work in March 2008. On April 14, 2008, he saw Dr. Houser describing recurrent pain, but no substantial care was recommended at that point. PX6. The petitioner testified he did not have problems until approximately September 2008, and on October 29, 2008, he returned to see Dr. Ramshaw, noting pain had begun approximately two months before that date and had progressed. Dr. Ramshaw recommended a CT scan to determine if a mesh failure had occurred and to work light duty pending a follow-up examination. Light duty was accommodated by the respondent at that time. On December 9, 2008, Dr. Ramshaw recommended a pain management referral. See PX6. On December 18, 2008, the claimant ceased working light duty.

The respondent secured a utilization review which recommended the CT scan but disputed the pain specialist referral at that juncture (see RX3). After the CT scan demonstrated another mesh failure or recurrent hernia, the petitioner treated with Dr. Shelby Kopp and Dr. Mathews and subsequently underwent a third hernia surgery by Dr. Ramshaw on September 8, 2009 to again repair the surgical site and the mesh. The petitioner was never released to full duty during this time period. (PX6, 7 & 8)

Following the surgery, Dr. Ramshaw moved his practice and the petitioner followed up with his colleague, Dr. Bachman. On January 6, 2010, the petitioner was assessed at MMI regarding the hernia issue, and relative to it he was given permanent lifting restrictions of twenty pounds and told to move around, as time limits of prolonged standing, walking, sitting and driving were noted. It does not suggest that the claimant cannot work an eight-hour day so long as the claimant does not extend past the time limit for each one of these tasks. PX18. It is not disputed that these restrictions are inconsistent with his preinjury job duties.

Following the September 2009 surgery the claimant had radiating pain into his legs and was subsequently diagnosed with meralgia paresthetica, a neurological condition which was assessed as a complication of the surgical positioning. See PX10. Petitioner came under the care of Dr. Hagan, who performed surgical decompression of his left lateral femoral cutaneous nerve on July 21, 2010. Following surgery he had nerve block injections and physical therapy. He achieved MMI on November 18, 2010. No medical restrictions were assessed relative to this issue, but his prior restrictions regarding the hernia surgeries were not amended. See PX11.

On March 30, 2011, Dr. Cantrell evaluated the petitioner pursuant to Section 12 of the Act. Dr. Cantrell believed the petitioner would eventually be able to lift fifty

14IWCC0179

pounds without risk. However, Dr. Cantrell did not believe the petitioner would be capable of resuming work at Cintas because of the heavy lifting requirements. PX12.

The respondent could not provide a job within the permanent restrictions and on April 12, 2010, the claimant was referred for vocational assistance. See PX15, RX4. On August 22, 2011, the petitioner began working at his brother's grocery/convenience store making \$7.25 per hour approximately twenty-five hours a week.

The petitioner testified that if he sits too long he gets tingling and pain in his left leg, and that a couple times per week he gets abdominal pain, often precipitated by physical activities or by actions such as sneezing. He avoids sports and will take over the counter medication and use a heating pad.

OPINION AND ORDER

Temporary Total Disability and Maintenance

The petitioner seeks temporary total disability or maintenance benefits for 156 & 4/7 weeks covering various periods between April 18, 2007 and August 21, 2011. The Arbitrator will address these individually, noting temporary total disability would extend through the date of maximum medical improvement. Thereafter, benefits would be characterized as maintenance. His hernia condition achieved MMI on January 6, 2010 and his leg complaints did so on November 18, 2010.

The Arbitrator's review of the evidence supports a finding that eligibility for temporary total disability has been established for the following periods:

- 1) April 18, 2007 through May 13, 2007 (following the injury until Dr. Terschulse released the claimant to light duty; see PX2);
- 2) August 1 through 5, 2007 (Dr. Terschulse, see PX2);
- 3) January 10, 2008 through February 6, 2008 (Dr. Ramshaw/Dr. Pruett, PX6)
- 4) April 14-16, 2008 (Dr. Houser; PX6)
- 5) December 19, 2008 through MMI on November 18, 2010 (PX6-8, PX11-12)

While Dr. Ahmed may have taken the petitioner off of work from September 26 through October 21, 2007, this note is both contradicted by Dr. Ahmed's own internal notes and stands in opposition to Dr. Terschulse's full duty release and Dr. Pruett's light duty release during that time frame, as well as the negative CT scan. TTD during that period is denied. While the petitioner did not return to work immediately following the February 6, 2008, release, there is no medical evidence indicating inability to work during that period, and TTD is not supported.

As of November 2010, vocational services had already been discussed and these continued until he began employment on August 22, 2011. Maintenance benefits would thus apply from November 19, 2010 through August 21, 2011.

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Accordingly, the claimant has demonstrated eligibility for 108 & 6/7 weeks of temporary total disability and 39 & 3/7 weeks of maintenance, for a total of 148 & 2/7 weeks of benefits at the TTD/maintenance rate of \$554.69 per week, a total liability of \$82,252.60. The respondent has paid \$85,586.16 for this time span and shall be credited \$3,333.56 for the overpayment against weekly benefits as discussed below.

Nature and Extent of the Injury

It is unrefuted that the petitioner is unable to return to his pre-injury employment due to the physical limitations caused by this injury. The claimant procured employment beginning on August 22, 2011. The claimant requests an award pursuant to Section 8(d)1 of the Act (wage differential).

PX19 is a group exhibit of the petitioner's pay records in his new employment. It demonstrates he became employed at \$7.25 per hour and remained so at the time of trial, working an irregular schedule of approximately 25 hours per week over the 34 weeks from August 28, 2011 through May 5, 2012 represented by these documents. The claimant earned \$6,024.78 during that span, or \$177.20 per week.

Section 8(d)1 notes the appropriate calculation is based on the difference between what the claimant would be earning in his pre-injury employment and the amount he can earn in suitable employment after the accident as a result of the limitations. The parties stipulated that absent the injury, the claimant would be earning \$971.00 per week in his pre-injury employment. The petitioner's work restrictions do not compel part-time employment, but the respondent did not claim inadequate earnings or request additional vocational efforts be undertaken. The Arbitrator thus accepts the above part-time employment earnings as the amount he could earn, rather than a conventional 40-hour week at \$7.25 per hour. The differential is therefore $\$971.00 - \$177.20 = \$793.80$ per week. Section 8(d)(1) benefits are two-thirds the difference, or \$529.20 per week.

It is ordered the respondent shall pay the petitioner, pursuant to 8(d)1 of the Act, \$529.20 per week beginning August 22, 2011 and for as long as the disability lasts. As of the May 23, 2012 trial date, 39 & 3/7 weeks of benefits had accrued, resulting in liability of \$20,865.60. Against this amount, the respondent is credited \$3,333.56 as noted in the TTD/maintenance section above and \$16,179.61 in benefits paid following August 22, 2011, for a total credit of \$19,513.17. The respondent is thus liable to the petitioner for \$1,352.43 in benefits owed as of May 23, 2012, and for weekly benefits thereafter at the rate of \$529.20 per week, for such time as the disability lasts.

Penalties and Fees

The claimant requests penalties and fees be imposed upon the respondent for vexatiously and unreasonably failing to timely pay benefits including TTD, TPD, mileage

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and wage differential benefits during the course of the litigation. The Arbitrator finds that the evidence adduced does not support these remedies.

The compelling evidence introduced involves the stipulations of the parties, the composite exhibit PX17, being the correspondence between counsel, and RX1, the respondent's payment ledger. The correspondence in particular undermines the claim of unreasonable and vexatious conduct. When inquiries were made as to the status of checks, responses were timely and rectification, if needed, was made immediately. No hostility or ill-feeling was demonstrated, and there does not appear to be any assertion by the respondent of bad faith or prejudice. This does not support a finding of vexatiousness of the respondent against the claimant in either behavior or attitude.

Moreover, substantial sums were paid throughout the course of the case. The parties stipulated that all the medical bills were paid by the respondent prior to hearing, a sum in excess of \$100,000.00. In addition, the respondent paid the claimant's mileage and vocational services, which were offered in a timely manner following the claimant's permanent restrictions being authored. As noted above, substantial disability payments were made throughout the course of the claim as well.

The Arbitrator does not view the history or handling of the case to be motivated by ill feeling or in bad faith, or done in a deliberate, vexatious, or negligent manner. Penalties and fees are therefore denied.

STATE OF ILLINOIS)

☐ Affirm and adopt (no changes)

☐ Injured Workers' Benefit Fund (§4(d))

) SS.

☐ Affirm with changes

☐ Rate Adjustment Fund (§8(g))

COUNTY OF MADISON)

☒ Reverse

☐ Second Injury Fund (§8(e)18)

☐ Modify

☐ PTD/Fatal denied

☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Clifford Johnson,
Petitioner,

vs.

NO: 08 WC 18028

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Steve Golightly d/b/a Mini
Max Storage and U Haul,
Respondent,

DECISION AND OPINION ON REMAND

On March 1, 2010 Arbitrator Nalefski found Petitioner sustained an accidental injury arising out of and in the course of his employment on October 24, 2007. As a result of the October 24, 2007 work accident he found Petitioner was temporarily totally disabled from October 24, 2007 through November 12, 2009 for 106-5/7 weeks. The Arbitrator further found, "Petitioner will need a total knee replacement as a consequence of this work accident. Respondent shall pay for that procedure, subject to the medical fee schedule, when the time comes", Petitioner lost 40% of the use of his right leg. Petitioner's shoulder condition is not causally connected. Respondent is entitled to a credit of \$13,032.68 for temporary total disability/maintenance payments.

On April 5, 2010 Respondent filed a Petition for Review marking the issues of causation and prospective medical care. On October 20, 2010 the Commission issued a decision in which struck the phrase "when the time comes", but otherwise affirmed the Arbitrator's decision. On November 15, 2010 Respondent filed a Section 19(f) Motion indicating that the following sentence be deleted from the decision "Petitioner will need a total knee replacement as a consequence of this work accident. Respondent shall pay for that procedure, subject to the medical fee schedule, when the time comes". The Motion was granted on November 22, 2010. The original Decision was recalled and a Corrected Decision was issued. On December 20, 2010 a Corrected Decision and Opinion on Review was issued. Unfortunately, this decision mirrored the first decision and only struck the language "when the time comes". On March 3, 2011

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Respondent issued a check to Petitioner for permanent partial disability benefits and interest. On March 10, 2011 the Commission, sua sponte, recalled the Corrected decision and issued a second Corrected Decision which struck the following sentence from the decision "Petitioner will need a total knee replacement as a consequence of this work accident. Respondent shall pay for that procedure, subject to the medical fee schedule, when the time comes." The Commission's Mainframe shows Petitioner filed a Section 19(k) Petition on February 23, 2011, filed a Section 16 Petition on March 8, 2011 and filed Section 19(k) and Section 16 Petition on March 16, 2011. On March 22, 2011 Petitioner filed an Amended Petition for Penalties under Sections 19(k) and 16 of the Act. A Review Hearing on this Petition was held on May 9, 2011. On July 11, 2011 the Commission issued an Order denying Petitioner's Petition for Penalties/Attorneys' Fees holding Respondent was not obligated to tender payment until the award was final. The decision didn't become final until April 7, 2011. Respondent had made payment of permanent partial disability award and interest on March 3, 2011.

Petitioner filed an appeal to the Circuit Court. On June 25, 2012, the Circuit Court found that any portion of the claimant's benefits that are undisputed must be promptly paid or the employer will be subjected to penalties and attorneys' fees. The Circuit Court reversed the decision of the Commission in denying Section 19(k) penalties and Section 16 attorneys' fees and remanded the case to the Commission for further proceedings.

On October 30, 2012 after both parties had filed a joint motion to determine jurisdiction in the Appellate Court, the Appellate Court dismissed the appeal for lack of jurisdiction finding that the Circuit Court's Order was not a final and appealable order.

Currently, this case is before the Commission is on remand from the Circuit Court. The Commission has reviewed the record and file and finds that Petitioner is entitled to \$10,221.00 under Section 19(k) of the Act and \$4,088.40 in attorneys' fees under Section 16 of the Act. Lastly, the Commission finds that the legal costs are separate and apart from this decision and are a contractual issue between the Petitioner and his attorney.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission finds:

1. Petitioner was entitled to his permanent partial disability award as of November 13, 2009 after his temporary total disability award had ended. Although Respondent raised the issues of causation and prospective medical care on Review of the Arbitrator's decision, Respondent did not raise the issue of permanency. Thus, permanency payments would have accrued from November 13, 2009 through July 9, 2011.
2. On March 3, 2011 Respondent paid the permanent partial disability award and interest.
3. On May 9, 2011 a Review Hearing was held before Commissioner Donahoo on Petitioner's Petition for Additional Compensation under Section 19(k) and Attorneys' Fees under Section 16 of the Act. More specifically, Petitioner contends that Respondent

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should have paid the permanent partial disability award when it was due and owing since it was not an issue on Review.

4. The Appellate Court found in Zitka v. Industrial Commission, 328 Ill.App.3d 844 (2002) that Respondent only raised a medical issue and was not contesting the temporary total disability or permanent partial disability awards. Moreover, having not contested that portion of the award, the Appellate Court found that the awards for temporary total disability and permanent partial disability were due and payable prior to a final award being issued by the Commission. Furthermore, having not paid the award the Appellate Court found that Respondent's actions warranted additional compensation under Section 19(k) and attorneys' fees under Section 16 of the Act to be assessed against the Respondent.
5. The Appellate Court in Jacobo v. Illinois Workers' Compensation Commission, 959 N.E.2d 772 (2011) also found like the Appellate Court in Zitka, Id. that the claimant's appeal on an issue unrelated to the substantive award is not a legitimate reason to withhold payment of the undisputed award. The Court held that the employer's delay in paying the uncontested award served no purpose except to delay compensation to an injured worker; a result that the penalties are designed to prevent. The Court specifically held that any portion of the claimant's benefits which are undisputed must be promptly paid or the employer will be subject to penalties and attorney fees under the Act.

Based on the above, the Commission finds that Respondent should have paid the uncontested permanent partial disability award that was due as of November 13, 2009 through the date of the May 9, 2011 Review Hearing dealing with Petitioner's Section 19(k) and Section 16 penalties/fees Petition. The total of the permanent partial disability award is 86 weeks and the payment period spanned from November 30, 2009 through July 8, 2011 at a rate of \$264.00 x 86 weeks totaling \$22,704.00. The Commission finds that from November 13, 2009 through the May 9, 2011 Review Hearing 77-3/7 weeks of the permanent partial disability award had accrued leaving un-accrued amount of 8-4/7 weeks, which is \$264.00 x 8-4/7 weeks and totals \$2,262.00. Using the \$22,704.00 total of accrued permanent partial disability-\$2,262.00 which had not accrued the total=\$20,442.00 and divided by 50% the total=\$10,221.00. Based on the holding of the Appellate Court in Zitka, id. the end period should be the date of the Review Hearing for Petitioner's Penalties/Fees Petition and not the Remand Hearing date. Furthermore, Section 16 should be related to Section 19(k). Any cost due to Petitioner's attorney should be part and parcel of the Attorney Representation Agreement, which is a contract entered into between Petitioner and his attorney and not part of Section 16 calculation. As such, Petitioner's attorney should be due \$4,088.40 in attorneys' fees, which is 20% of the amount of the accrued permanent partial disability award.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner additional compensation of \$10,221.00 as provided in §19(K) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that of the sum of \$4,088.40

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Respondent pay to the attorney for the Petitioner legal fees in the amount as provided in §16 of the Act; the balance of attorneys' fees to be paid by Petitioner to his attorney.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

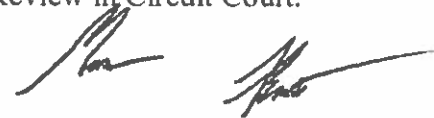
Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$14,400.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: **MAR 17 2014**

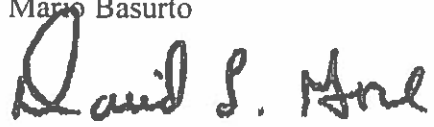
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Mario Basurto



David L. Gore



Daniel Donohoo